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**REFLECTIONS ON CRIME AND  
PUNISHMENT IN CHINA, WITH  
APPENDED SENTENCING  
DOCUMENTS**

**Randle Edwards, Translation of Doc-  
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# **OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMPORARY ASIAN STUDIES**

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# **REFLECTIONS ON CRIME AND PUNISHMENT IN CHINA, WITH APPENDED SENTENCING DOCUMENTS**

By RANDLE EDWARDS

Translation of Documents by Randle Edwards  
and Hungdah Chiu

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# Reflections on Crime and Punishment in China, With Appended Sentencing Documents

Randle Edwards\*

## I. INTRODUCTION

To many Americans who have visited the People's Republic of China (PRC) since the "bamboo curtain" was pierced by the American ping-pong team in the spring of 1971, one of the most impressive accomplishments of Mao Tse-tung's revolution has been the apparent eradication of crime. Many visitors return with a story about how articles lost or discarded are returned to them sometimes in another city a thousand miles away. To these people, it may come as a shock to learn that crime continues to be a problem for China's leaders. Because of the extremely tight control on the flow of information, outsiders only rarely learn of the existence of crime in China. And it is even more difficult to secure reliable information on how criminals are apprehended, tried, and sentenced. Thus, the emergence of several Chinese criminal sentencing documents<sup>1</sup> offers an unusual opportunity to study the operation of one aspect of the Chinese criminal process.

The purpose of this paper is to comment upon the aims, principles, and — to the extent possible — the procedures of criminal sentencing in China today. Although I shall draw extensively upon the appended documents, I will also use existing scholarly studies as well as interviews with former residents of China to place the documentary material in proper perspective. But, before focusing upon criminal sentencing I would like to introduce some important aspects of Chinese law and politics which will place the body of the paper in context. As several excellent general studies of the Chinese

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1. For discussion of the source, nature, and authenticity of the documents which are appended to this article, see notes 32-33 and accompanying text *infra*. The translations are by the author and Professor Hungdah Chiu of the University of Maryland Law School, with the assistance of Chao Nien-ju, a research associate.

criminal process have already been published,<sup>2</sup> I shall not attempt an exhaustive description and analysis but will only deal with matters which I consider will best facilitate comprehension of the subsequent discussion of the sentencing process.

The theme which is stressed perhaps most openly and often in Chinese political propaganda is the need to consolidate and strengthen the "proleterian dictatorship." A grasp of the meaning of this term is essential to the understanding of both the theory and reality of the contemporary Chinese legal process. A Leninist concept which has been superseded in the Soviet Union by its claim to be a "state of all the people," the term "proleterian dictatorship" signifies the indispensability of state institutions and the use of coercive state power to suppress and eventually to eliminate enemy classes. Since Marxist analysis maintains that state institutions and the laws they administer can represent only the ruling class, it follows that law in China should serve the interests of the proletariat, as articulated and represented by the Chinese Communist Party.

We should also note, however, the existence of tension and "contradiction" between the call for obedience to the proletarian state apparatus led by the Chinese Communist Party and the Maoist belief in combating bureaucracy and promoting greater direct participation by the masses in economic and political administration. Chairman Mao's distrust of bureaucrats and his call for uninterrupted revolution contributed greatly to the progressive informality in the development of Chinese legal institutions which will be briefly sketched below. Despite Mao's death and the purge of his widow and other "radical" Party leaders, the current "moderate" leadership is unlikely to attempt a drastic modification of China's political and legal institutions.

It is also important to stress at the outset the Chinese Communist Party's commitment to the Marxist path of development — that is, to achieve the ultimate goal of a communist form of ownership and distribution through first establishing socialist ownership of the "means of production"<sup>3</sup> and through the use of comprehensive

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2. See, e.g., J. COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-1963: AN INTRODUCTION* (1968); Lubman, *Form and Function in the Chinese Criminal process*, 69 COLUM. L. REV. 535 (1969); Li, *The Role of Law in Communist China*, 44 CHINA Q. 66 (1970).

3. There are, of course, differences among the various socialist states with respect to ownership of agricultural land — with full public ownership in the Soviet Union and predominantly private ownership in Yugoslavia and Poland — but in all of them the Communist Party enforces use in the public interest. See J. HAZARD, *COMMUNISTS AND THEIR LEGAL SYSTEMS* 145-69 (1969). Articles 5 and 7 of the PRC state constitution provide that the two main kinds of ownership are socialist state ownership and socialist collective ownership. The

economic planning. The current leadership has clearly indicated its determination to make China a "powerful modern socialist country" by the end of this century.<sup>4</sup> Thus, the elaboration of policies and the development of institutions in every sector of social, political, and economic life must be analyzed in the light of their ultimate political purpose of setting the stage for communism.

In short, laws are promulgated and interpreted so as to support implementation of Party policy. The interpretation of a given law, or the punishment imposed for a given crime, may vary widely as the Party modifies its policies to accommodate changing priorities or to respond to perceived changes in the "concrete conditions" of political behavior or agricultural and industrial production.<sup>5</sup>

Developments in Communist Chinese legal institutions to date reveal a linear trend toward decentralization, informality, and anti-professionalism. It would be wrong, however, to state unequivocally that this trend reflects an irreversible Chinese commitment to the Marxist goal of the "withering away" of the state. Management of social conflict through a combination of popular mediation and disciplinary sanctions applied in an administrative rather than an adjudicative process is a time-honored tradition in China. The trend away from formal legality, as has been suggested, is also partly due to Chairman Mao's distrust of specialists and bureaucrats and his faith in the innate wisdom of the masses. Because of the unique role played by Mao during his life-time and the improbability of finding another charismatic leader with Mao's genius, his successors may eventually prefer a more stable bureaucratic-administrative model of law. But because of Mao's immense prestige, it is unlikely that China's new leaders will attempt to dismantle overnight all Maoist doctrine and institutions. Even if they should decide, for example, to build a more formal and stable legal system, the implementation of such a decision would take many years. Thus, for the time being, the student of Chinese law must still approach the subject with understanding of Maoist premises and purposes.

It may be useful at this point to examine certain key political-legal concepts which dominate the ideological and institutional framework of China's criminal process. First, as a good Marxist, Mao Tse-tung consistently espoused the application of the dialectic — or, as he terms it, the "theory of contradictions" — to explain

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former is dominant in industry and the latter is predominant in agriculture.

4. This is the goal announced by the late Premier Chou En-lai in his Report on the Work of the Government, delivered to the Fourth National People's Congress on January 13, 1975. PEKING REV., Jan. 24, 1975, at 21, 25.

5. For an excellent exposition of this point, see Lubman, *supra* note 2, at 560-61.

the way in which progress takes place in the "realm of the superstructure" (ideas, beliefs, institutions, and practices) as well as in the economic base. It is a fundamental theoretical tenet of "Marxism, Leninism, Mao Tse-tung Thought" that man can make no real progress toward the goals of material abundance and communist consciousness without an awareness of how to recognize and utilize the incessant contradictions that arise in all aspects of human activity.<sup>6</sup>

A further refinement was added by Chairman Mao in a major address in 1957 entitled "On the Correct Handling of Contradictions Among the People,"<sup>7</sup> in which Mao established a distinction between contradictions "among the people" and "those between the enemy and ourselves." Proper characterization of a deviant act is a difficult task which involves weighing several factors, including the class status of the actor, the presence or absence of criminal intent, whether the offense is considered a political crime, and the nature and extent of the "social danger" created by the act. The former category — contradictions among the people — as applied in the legal process usually connotes minor crimes committed without a political motive; acts classified as "contradictions between the enemy and ourselves" ordinarily involve a finding of actual or imputed intent to undermine the socialist system.

The distinction between the two kinds of contradictions has fundamental significance for anyone studying the Chinese legal process.<sup>8</sup> For Mao ordains that "contradictions among the people" should be resolved principally through "persuasion-education." This doctrine underlies the increasing emphasis in China's legal process since 1957 on the use of non-professional bodies, chiefly the primary units of work or residence, to sanction deviants and handle disputes in an informal and flexible fashion.<sup>9</sup> Contradictions between the people and the enemy, however, are to be handled by the "organs of dictatorship," i.e. the legal organs, led by the Party.

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6. MAO TSE-TUNG, *On Contradiction*, in 1 *SELECTED WORKS OF MAO TSE-TUNG* 311 (1967).

7. *Reprinted in* CHUNG-HUA JEN-MIN KUNG-HO KUO FA-KUEI HUI-PIEN 1 (1957).

8. A former judge from Michigan, George W. Crockett, Jr., reports that during a visit to China in June 1975, he was told by Sidney Shapiro, an American attorney who has lived in China for many years, that Mao's 1957 speech on contradictions is indispensable reading for students of China's judicial system. Chinese law professors also refer to Mao's speech as a keystone of their legal system. *Criminal Justice in China*, 59 *JUDICATURE* 240, 241-42 (1975). Professor William Jones also regards Mao's speech as the "principal statement regarding law." Jones, *A Possible Model for the Criminal Trial in the People's Republic of China*, 24 *AM. J. COMP. L.* 229 (1976).

9. See generally sources cited note 2 *supra*. See also Cohen, *Chinese Justice: It's a Puzzlement*, *Washington Post*, July 9, 1972, at 5, col. 2.



The classification of deviant acts into two separate categories depending on whether they involve the "people" or the "enemy" remains of pivotal importance in the Chinese legal process because of the pervasiveness of the concept of "class" in Chinese political-legal discourse. Unlike the Soviet Union, which has claimed since 1961 to be a "state of all the people," Chairman Mao's "basic line" guiding the Party and the country throughout the period of socialism declares that "there are still classes, class contradictions, and class struggle . . . and . . . the danger of capitalist restoration."<sup>10</sup> Because of the vagueness of the terms "people" and "enemy," however, it is easy for the Chinese authorities to make mistakes in handling the two kinds of contradictions. Even erstwhile "people" are harshly punished when they commit certain offenses. They are subsequently regarded as "enemies." In classic Marxist usage, the rubric "class enemy" should be reserved for those owners of the means of production who engage in exploitation of the laboring masses. In China, however, the enemy label is loosely applied by the Party to anyone whose thought and behavior does not measure up to standards which are often unwritten and whose application is not subject to regular public review. This flexibility obviously gives enormous power to local Party leaders by enabling them to brand their opponents "class enemies."

As suggested above, law in China, unlike its Soviet counterpart, has become progressively less formal, less professional, and ever more responsive to shifts in the Party's political line. Civil and criminal codes drafted in 1956 and 1957 have never been promulgated. Moreover, judging from a recent interview between a western journalist and some Chinese "judicial workers," no significant separate criminal statutes appear to have been promulgated in almost twenty years.<sup>11</sup>

Courts, which play such a vital role in the American legal system and which are important even in the Soviet Union, in China have been almost invisible since the early 1960's. Although a system of courts is retained in the structure of government set forth in the 1975 constitution, it appears that the jurisdiction of courts is limited to a cursory review of police handling of serious criminal cases and to selected contested divorce cases deemed to be of educational

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10. Statement of Mao Tse-tung, quoted by Vice-Premier Chang Chun-chiao in his Report on the Revision of the Constitution, *reprinted in PEKING REV.*, Jan. 24, 1975, at 18.

11. When asked about their criminal laws, high judicial officials of Kwangtung Province who were interviewed in May 1974, referred only to the handful of criminal statutes promulgated in the early and mid-1950's. Ruge, *An Interview with Chinese Legal Officials*, 61 *CHINA Q.* 118, 119 (1975).

significance. In less serious criminal cases, the procedures of investigation, adjudication, and sanctioning are conducted by the work or residential units, in informal consultation with the public security organs.<sup>12</sup> In either case, the Chinese Communist Party exercises a controlling influence, both through the elaboration of guidelines for implementing the latest directive of the Central Committee, and through the fact that key leadership positions in both the public security organs and the units are held by Party members who are directly accountable to the local Party organs.

The procuracy, which in the Soviet Union not only exercises the prosecutorial function but also has considerable powers to detect, control, and suppress illegality and arbitrariness in any branch of the government,<sup>13</sup> was abolished in China during the anti-bureaucratic high tide of the Cultural Revolution.<sup>14</sup> But, unlike the public security organs and the courts, which were reestablished in the early 1970's and accorded the legitimacy of mention in the new 1975 state constitution, the procuracy is apparently gone forever. The procuratorial function, part of which was to discover, prosecute, and prevent police abuse of powers, has been transferred to the police themselves.<sup>15</sup> The net result of developments over the past decade, then, is to reduce the area of police primary jurisdiction by expanding the scope of legal responsibilities of the work and residential units. The people's militia, a mass organization of "volunteers," has also assumed a greater role in maintenance of public order in recent years. For example, the violent disorder which took place in Peking's Tien-an Men Square in April 1976 was suppressed not by the police or the military alone but with the aid of the militia.<sup>16</sup> But in those areas where the public security retains primary jurisdiction, such as the handling of serious crimes, institutional checks such as the procuracy have been abolished so that now the police answer only to the Party and the "masses."

Another feature which distinguishes the Chinese legal process

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12. See sources cited note 2 *supra*. The prevalence of this "work style" is also supported by extensive interviews conducted from 1974 to 1977 in New York by the author with Chao Nien-ju, a former "cadre" who left China in 1972. Although not trained as a legal specialist, Chao served from 1969 to 1972 as a member of a "Mao Tse-tung Thought Propaganda Team" which was primarily involved in investigating and proposing sentences for a broad range of political offenses and ordinary crimes. The team at different times worked at the team, brigade, commune, and county level in Fukien Province.

13. H. BERMAN, *JUSTICE IN THE USSR* 238-47 (1963).

14. Lubman, *supra* note 2, at 574.

15. P.R.C. CONST. art. 25, reprinted in *PEKING REV.*, Jan. 24, 1975, at 12, 17.

16. *PEKING REV.*, April 9, 1976, at 7. The militia is also involved in routine patrolling of city streets. See Burns, *Street Crime Up in Chinese Cities*, *N.Y. Times*, Jan. 11, 1974, at 7, col. 3.

from that of the Soviet Union as well as from our own is the virtual absence of a legal profession. The role of lawyers, never very extensive or important, became further restricted in 1957 during the Anti-Rightist campaign when all Chinese political institutions underwent a major leftward reorientation.<sup>17</sup> The low profile of the legal profession in China today is illustrated by the Chinese official response to questions about the availability of defense attorneys. Visitors are told that "there are lawyers in China today but they do ordinary factory or office work until asked to defend an accused person."<sup>18</sup> Besides, they say, criminal defendants rarely wish to have formal representation.<sup>19</sup> In this connection, it should also be noted that the 1975 constitution has eliminated the earlier constitutional provision explicitly guaranteeing that the accused in a criminal case has the right to make a defense.<sup>20</sup> Deletion of this right from the constitution did not actually represent an abrupt change in criminal procedure. In fact the right to a criminal defense had never been vigorously exercised. For the defense attorney, aggressive advocacy of the defendant's individual interests against the collective interests of society would signify he had "lost his political standpoint," and for the defendant stubborn insistence on the exercise of his procedural rights would inevitably lead to the conclusion that he was "unrepentant" and thus ineligible for the leniency accorded to those who confess and repent.<sup>21</sup>

Another indication of the decreasing significance of the formal model of law was the cessation in 1966 of publication of *Political-Legal Research*, the official journal for discussion of legal matters.<sup>22</sup> Although the contents of this journal had become increasingly polemical in nature since the rejection of the formal Soviet legal model in 1957-58, scholars of Chinese law could nevertheless still glean from its pages some sense of the kinds of legal problems and possible institutional responses being considered by China's legal policy makers. Since the commencement of the Cultural Revolution, however, this resource has been denied to Chinese legal workers as well as to foreign scholars.

The demise of the official Chinese legal journal is only one of a host of formidable problems impeding research on law in the PRC.

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17. COHEN, *supra* note 2, at 468-73.

18. Statement by Hao Shuang-lu, deputy director of the Tientsin High People's Court, N.Y. Times, Aug. 13, 1975, at 8, col. 2.

19. *Id.*

20. P.R.C. CONST. art. 76 (1954), (repealed 1975) reprinted in COHEN, *supra* note 2, at 345.

21. See COHEN, *supra* note 2, at 463-65.

22. *Id.* at 8, 59.

For example, because the Chinese have rejected the very concepts of stability and predictability that in the West have given rise to codification and published judicial decisions,<sup>23</sup> the kind of sources one begins with in American legal research simply do not exist for the study of Chinese law.

As committed Marxists, China's leaders view law merely as a tool for promoting socialist revolution and socialist construction. The policies established by the Chinese Communist Party to achieve these goals are only in part expressed in the form of normative enactments that we would recognize as "laws." Moreover, the laws that have been formally enacted possess a built-in obsolescence factor. They are the products of a specific phase of revolutionary transformation, promulgated with the purpose of creating conditions for moving on to the next stage. When the next stage of political or economic development has been reached, the old statutes cease to have meaning or force though they may not be officially abrogated or revised. Existing laws are being constantly superceded or "hollowed out" by self-executing policy directives issued by the Party.<sup>24</sup>

Even more serious than the obsolescence factor is the Chinese policy of enforcing the utmost secrecy regarding many important legal rules and procedures. Even smuggling out of China a few copies of a local newspaper is punished as a counterrevolutionary offense.<sup>25</sup> Although in its first fifteen years the PRC published compendia of its administrative laws as well as a few criminal statutes, it ceased to do so in 1964. In fact, the only recently promulgated laws available to foreigners are the new abbreviated state constitution<sup>26</sup> and a 1972 statute regulating internal shipping.<sup>27</sup>

Certain important new policies and rules are made known only to the state cadres responsible for their implementation; some, such as the 1962 "Sixty Articles for Agriculture" and the "Six Articles on Public Security" of 1967 were openly and widely posted within China.<sup>28</sup> Other policies and rules of general application throughout the populace are communicated down to the masses from the center

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23. *Id.* at 8.

24. In an excellent article entitled *A Model for Chinese Legislation: The 1972 Shipping Regulations*, Anthony Dicks discusses the impact of the Cultural Revolution upon the form and content of the PRC statutory enactments. 57 CHINA Q. 63 (1974).

25. See cases in a sentencing document issued April 26, 1974 in Yunnan Province, reprinted in 11 ISSUES & STUDIES (Taiwan) 111, 112 (1975).

26. For the Soviet view of the new Chinese constitution, see Hazard, *A Soviet Model for Marxian Socialist Constitutions*, 60 CORNELL L. REV. 985 (1975).

27. See Dicks, *supra* note 24, at 63-64.

28. Interviews with Chao Nien-ju, *supra* note 12, and with émigrés in Hong Kong.

through the descending levels of the Party administrative hierarchy. This process keeps this massive exercise in norm communication secret from the outside world.<sup>29</sup> At the same time, it ensures notification and a large degree of comprehension and acquiescence in the new norms, since all important communications are the subject of intensive discussion at the twice weekly political discussion meetings which all must attend.

Aside from the general rules and broad policy directives which are communicated to the masses through the above described process, it is also known that administrators receive secret handbooks and instructions to assist them in the thorny job of applying Mao's lofty and ambiguous "great directives" to the concrete circumstances of day-to-day life. It appears, however, that the language of the secret handbooks may be just as imprecise and ambiguous as the public policy directives.<sup>30</sup>

Obviously, foreign legal scholars are not on the mailing list of either the "transmission down" process or the internal directives. What, then do we rely upon as the raw material for our analysis of the Chinese legal process? The answer is that we are forced to compile a picture of the Chinese legal process from occasional statutes, (old) legal textbooks, emigre interviews, and Chinese newspaper accounts dealing with political movements, the handling of individuals with "problems," and the criminal sentencing of "class enemies." We rarely have access to official Chinese government legal documents illustrating the actual operation of the legal process.

But, as stated at the beginning, one of the aims of this article is to introduce and analyze several sentencing documents which have emerged from China during the past two or three years. The lengthiest of the appended documents (Document A) is an official announcement of the names and sentences, with a cursory description of the crimes, of twenty-nine individuals sentenced by the Tientsin Intermediate People's Court on August 5, 1973. Documents B and C announce the sentences in several cases handed down by military tribunals in Yunnan Province in 1972 before the legal organs were restored to civilian control.<sup>31</sup> Document D is an announce-

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29. Oksenberg, *Methods of Communication within the Chinese Bureaucracy*, 57 CHINA Q. 1 (1974).

30. Lubman, *supra* note 2, at 559. Professor Jones' view is that these secret manuals contain "fairly tight, written guidelines . . . that describes exactly how every step of this [criminal] procedure is to be taken. . . ." Jones, *supra* note 8, at 242.

31. For a discussion of the role played by the military in restoring order after the chaotic violence of the Cultural Revolution, see A. BARNETT, *UNCERTAIN PASSAGE: CHINA'S TRANSITION TO THE POST MAO ERA* 79-88 (1974).

ment dated November 27, 1973, of sentences meted out by the Harbin Intermediate People's Court to persons convicted of economic crimes. Documents A, B, and C were obtained from a Taiwan journal, *Issues and Studies*, which published a rough partial translation of Document A.<sup>32</sup> Document D was obtained from western journalists and was the basis of a newspaper article dealing with the crime of economic speculation in China.<sup>33</sup>

## II. FUNDAMENTAL PRINCIPLES OF CHINESE CRIMINAL SENTENCING

Foreign scholars have noted the emphasis the Chinese criminal process places upon reform and rehabilitation of the offender to enable him to make a maximum contribution to "socialist construction."<sup>34</sup> It follows that sentencing officials should pay serious attention to this goal. There is some evidence that this may have been the rule in the early days,<sup>35</sup> but the tone of the appended official criminal sentencing documents is more one of anger and vengeance directed at the enemies of socialism rather than genuine commitment to reform of the wayward. When an offender has reached the stage of formal criminal sentencing — often, to be sure, after repeated application of informal persuasion or administrative sanctions — the emphasis is clearly upon coercive restraint rather than compassionate "education."

Several basic principles seem to govern the determination of the sanction applied in a particular case. Certain of these are general principles concerning the role played by criminal punishment in promoting achievement of China's revolutionary goals. Other principles establish guidelines and criteria to be followed in determining the appropriate sentence in a given case.

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32. 10 ISSUES & STUDIES (Taiwan) 90 (1974). See also COHEN, *supra* note 2, at 8.

33. Burns, *Racketeers Prey on China Systems*, N.Y. Times, Jan. 28, 1974, at 5, col. 3. There is no reason to doubt the authenticity of Doc. D as it is based on a photograph obtained by a reputable journalist. As for Docs. A, B, and C, their genuineness is supported by their similarity in style and content to Doc. D, by corroboration in the official Chinese press of the existence of economic crime and problems with the youth resettlement program, and by interviews with Chinese emigrés who report having frequently seen posted documents similar in form and substance to those appended to this article. For instance, a former cadre who has examined the Chinese version of the appended documents is convinced of their authenticity. See note 12, *supra*.

34. See, e.g., LI, *Law and Penology: Systems of Reform and Correction in CHINA'S DEVELOPMENTAL EXPERIENCE* 144-56 (M. Oksenberg ed. 1973).

35. See generally A. & A. RICKETT, *PRISONERS OF LIBERATION* (1973). Of course, there have been numerous movements since 1949 aimed at the suppression of counterrevolutionaries and other enemies of socialism. Official sentencing statements posted in public throughout the period since "Liberation" have always stressed the need for harsh suppression of criminals. Interviews with Chao Nien-ju, *supra* note 12.

*A. Implementation of Current Party Policies*

The most important mission of the criminal process is to implement the policies of the Chinese Communist Party. Chinese society is considered to be in the midst of a continuing process of fundamental change, or, as Chairman Mao said, the Chinese leadership is committed to a path of "uninterrupted revolution." Given such an orientation, the best definition of acceptable social and political behavior is not what is prescribed in an old statute but rather what is dictated by the current Party line (or what can be read between the lines). Chinese spokesmen, unlike their Soviet counterparts, openly stress that legal practice should support policy as decreed and interpreted by the Party. The following quotation succinctly conveys the Chinese view of the proper relationship between law and policy:

. . . the law is nothing more than policy made concrete and articulate, and is a tool for the realization of party policy. It is only natural that it should be replaced by party policy when a law becomes outmoded. . . . Thus, what we consider lawful or not cannot be based merely on the norms of the provisions of the law. The norm to be used should be whether it violates party policy and the interests of the people, and whether it violates the interests of socialism and communism.<sup>36</sup>

Accordingly, changing social, economic, and political conditions often lead to radical shifts in policy. Such basic changes are usually initiated and guided by directives from the Party Central Committee. Some cryptic policy statements by Chairman Mao have directly affected the criminal process, such as his directive of late 1969 which ordered that "contradictions shall not be sent upwards."<sup>37</sup> Immediately after the issuance of this directive, many labor reform (prison) camps and labor reeducation camps (the harshest "non-criminal" sanction) were closed down and their inmates dispersed for "supervised reform" in factories, on communes, or in their own residential units.<sup>38</sup>

Other major policy initiatives affect the criminal process only indirectly — crimes which interfere with the smooth implementation of the policy will be punished more severely than when the

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36. *On the People's Democratic Dictatorship and the People's Democratic Legal System*, translated in 1 CHINESE L. & GOV'T 9, 11 (1969).

37. Interviews with Chao Nien-ju, *supra* note 12.

38. *Id.*

same offense does not infringe upon important current policies. Most of the cases in Document A illustrate the operation of this principle — indeed, five of the offenders mentioned in that document were sentenced to death with immediate execution because their crimes of raping “educated female youth” were found to have “undermined the program of sending educated youth to the countryside.” This important program, which has sent between ten and twenty million middle-school and high school graduates on a one-way trip to the countryside in recent years, promoted Chairman Mao’s cherished goal of attempting to reduce the “three great differences” — that is, the difference between city and countryside, between mental and manual labor, and between worker and peasant.<sup>39</sup> There has apparently been resistance to the program both from the peasants and from the “educated youth” and their families.<sup>40</sup>

The Party’s reaction to the difficulties has not been to abandon the youth resettlement program but instead to use the existing legal process in a flexible way to educate all concerned and to coerce compliance with the policy. As the appended documents illustrate, stern criminal punishment has been imposed on anyone convicted of “raping”<sup>41</sup> the city girls. As for the youth who desert their assignment in the countryside to return to an idle life in the city, recent traveler reports indicate that after being rounded up their heads are shaved, placards are hung around their neck indicating their “mistake,” and they are then returned to the countryside.<sup>42</sup> Of course it goes without saying that the chances of their being selected for higher education or for some other legitimate route back to the city are very remote indeed.

The offense of rape, normally punishable with a term of years

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39. For a thorough study of this important program, see T. BERNSTEIN, *THE TRANSFER OF URBAN YOUTH TO THE COUNTRYSIDE: REVOLUTIONARY CHANGE IN CHINA* (forthcoming, Yale University Press 1977).

40. Many peasants resent being required to share their meager income with city youth who are usually unaccustomed to hard labor and thus unable to produce as much as they consume. As for the youth, they find peasant life boring and many have been unable to adjust to the coarse life style of the country. And for some of the “female educated youth” there has been the annoyance and potential danger from the unwanted affection forced upon them by some local power holders who have things on their mind other than politics. As a result, many of the youth have fled back to the cities without permission. And, lacking ration coupons or legitimate employment, some have resorted to a life of petty crime. The Party has responded to this problem with a combined policy of tighter discipline and better living conditions, with the result that the situation is reported to have improved.

41. The appended sentencing documents use the term *ch’iang-chien* (which is usually translated as “forcible rape” or simply as “rape”) in a broader sense than is customary in American legal usage. In the Chinese context, use of indirect coercion by a person in a position of responsibility may be deemed “rape” despite the absence of direct physical force.

42. See, e.g., Ruge, *supra* note 11, at 122.



in prison, in the appended cases was punishable with death to underline the seriousness of interference with a major political program. In the trough between between major political "campaigns," reports of death penalties are rare but they become much more frequent during periods of intense political struggle when the Party desires to make an example of certain kinds of offenders.

*B. "Leniency To Those Who Confess and Severity To Those Who Resist"*

When explaining the criminal justice system in the PRC to foreign visitors, Chinese judicial spokesmen always stress the cardinal importance of the principle of "leniency to those who confess and severity to those who resist."<sup>43</sup> Giving a break to an offender who renders assistance to law enforcement agencies is, of course, not a practice employed only by the Chinese, as is well known by anyone familiar with plea bargaining and the use of informers in the American criminal process. But, in contemporary Chinese criminal law theory, leniency to those who confess fully, restore any ill-gotten gain, and inform on other wrongdoers, signifies more than a recognition of a contribution to the enhanced efficiency of the police and courts. Instead, it is grounded in the belief that most offenders are not "enemy" but "people" whose violation of law or policy is attributable to a low level of political and cultural awareness which, in turn, is due to contamination by exploiting class ideology. The proper societal response to such deviations is to "treat the illness and save the patient."<sup>44</sup> In other words, the offender should be reformed and reintegrated into society as a productive supporter of socialist construction and socialist revolution.

The necessary precondition for reform of a person who has transgressed the norms of socialist morality is that he be aware of his errors and be genuinely repentant. For minor offenses, if the offender satisfies these conditions, it is appropriate to forego the application of harsh and repressive criminal sanctions and, instead, turn the offender over to the masses for "persuasion-education," education through "struggle" and productive labor. Repentant serious offenders may receive substantial reductions in sentence. Those offenders who continue to resist, however, are not considered ame-

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43. Jones, *Crime and Punishment in China*, excerpts reprinted in 22 *ATLAS* 19 (1975).

44. See the statement on criminal sentencing and labor reform in China in a general briefing statement on the Chinese legal system delivered by three Peking University law faculty members in October, 1974, to a group of visiting Americans, reported in Brown, *Present-Day Law in the People's Republic of China*, 61 *A.B.A.J.* 474 (1975).

nable to persuasion-education and thus must be suppressed and restrained by harsh criminal sanctions. We will consider below in section III the extent to which the appended documents indicate that sentencing practice adheres faithfully to the underlying rationale for the leniency theory.

C. *"Safeguard Socialist Construction and Protect the Revolutionary Order"*

In any society, one of the important goals of criminal punishment is to protect the existing social, political, and economic order. Thus, it is not in itself particularly remarkable that a key consideration in Chinese criminal sentencing is the need to "safeguard socialist construction" and the "revolutionary order" by imposing harsh sanctions against persons who engage in market speculation or in the theft of state property.<sup>45</sup> But because the norms of proper behavior are in constant revolutionary flux, the sanctions imposed for such crimes have fluctuated widely.

In recent years, as Party leaders sought to restore order after the near anarchy of the Cultural Revolution period, stiff criminal sanctions have been imposed on major speculators.<sup>46</sup> Economic crimes are considered particularly heinous since they not only directly imperil the stability of the planned economy but also indicate that the offender's thought is hopelessly "bourgeois" and anti-socialist. This both undermines efforts to achieve stated goals of economic development and also reveals a breakdown in the program to heighten the "communist consciousness" of the masses. Thus, in post-Cultural Revolution China, as in the Soviet Union,<sup>47</sup> the commission of a serious economic crime may be considered a major political offense.

D. *Mobilization, Mass Education, and Deterrence*

One purpose of criminal sentencing in any society is popular education and general deterrence of crime. In China this aim re-

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45. See Doc. D *infra*.

46. *Id.* Although prior to the Cultural Revolution persons convicted of economic crimes generally received more lenient treatment than offenders in political or violent crimes, the disruption caused by an increase in economic crimes led to a Party decision to crack down hard on speculators during the "Strike-one, oppose three" campaign. This extremely broad and severe campaign was carried out in 1970-71 to strike down counterrevolutionaries and to oppose corruption and theft, speculation and profiteering, and waste. Many death sentences were handed down to economic offenders in accordance with the new Central Committee guidelines. For example, in 1970 a woman cadre in a state department store in Foochow was executed by firing squad after being convicted of profiteering. Interviews with Chao-Nien-ju, *supra* note 12.

47. J. HAZARD, *supra* note 3, at 459-61.

ceives particular stress because of the Chinese belief in the educability of man and because of Chairman Mao's great faith in the "mass line." Chinese legal documents thus often invoke the opinion of the masses. Indeed, one of the few law-related provisions of the new state constitution states: "The mass line must be applied in procuratorial work and in trying cases. In major counterrevolutionary criminal cases the masses should be mobilized for discussion and criticism."<sup>48</sup> Also, visitor accounts in recent years have reported public trials and executions.<sup>49</sup>

It is clear, however, that the proceedings called "mass trials" are not really trials but are rather educational dramas staged to heighten the vigilance of the masses so that they will:

strengthen [their] grasp of the enemy's circumstances, pay close attention to new developments in the class struggle and strictly defend against the destructive activities of the class enemy, pull out by the roots that handful of hidden class enemies, thoroughly eradicate the hidden illness, further consolidate and strengthen the proletarian dictatorship, and seize even greater victories for the revolution and for production.<sup>50</sup>

In addition, eyewitness accounts of public executions make it clear that the Party encourages the masses to give vent to feelings of retribution against criminals, whether or not their offense was political.<sup>51</sup> In handling persons who have committed spectacular and notorious crimes such as brutal homicides, it is customary in China to sample public opinion through canvassing conducted at the work and residential units.<sup>52</sup> And, if one can ascribe any significance at all to standardized variations in phraseology in the sentencing documents, it appears that the sentences ultimately imposed may well reflect the consensus of public opinion as to the appropriate sanction. Note, for example, that in all cases where the court states that "the people are extremely indignant" the offenders receive the death sentence, (Document A[1]-[5]). Where the people are merely "very indignant," (Documents A[16], B[4]-[5], C[2], and D[1]), the sentence is life imprisonment or a term of years.

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48. P.R.C. CONST. art. 25, reprinted in *PEKING REV.*, Jan. 24, 1975, at 12, 17.

49. Statement by Hao Shuang-lu, *supra* note 18. See also Sulzberger, *Crime and Punishment in China*, N.Y. Times, Nov. 25, 1973, §4, at 15, col. 2.

50. See Doc. B *infra*.

51. For example, Chao Nien-ju witnessed several mass rallies where condemned criminals were pushed and taunted on their way to execution. See note 12 *supra*.

52. See record of interview with Chinese official in 1975, *supra* note 18.

### III. BASIC CRITERIA OF CRIMINAL SENTENCING

Although the Chinese certainly do not make it easy for interested observers to study their criminal sentencing process, statements made by Chinese law professors and by judicial officials during formal briefings given for foreign visitors,<sup>53</sup> when considered together with the documents appended to this article and with emigre interviews, make it possible to isolate certain criteria which appear to exert a major influence upon criminal sentences. The factors which seem most significant in sentence determination are the political or economic situation at a given time; the nature and consequences of the criminal act; the class status of the offender; the offender's general political attitude and his past behavior; the offender's post-crime attitude toward his crime; and the opinion of the masses.

#### A. *The Current Political or Economic Situation*

The Maoist style of revolutionary transformation of the society, the economy, and the individual is to make "great leaps" rather than to pursue steady incremental change. The modality for achieving rapid breakthroughs is the political "campaign" or movement.<sup>54</sup> Among the hundreds of campaigns conducted since Liberation (in 1949), several have been intense and often violent "rectification campaigns" with "targets" designated for investigation, attack, struggle, and in many cases the imposition of criminal punishments.

The ground rules for carrying out these campaigns and for the imposition of criminal punishment on those unfortunates singled out as "major targets" are ordinarily prescribed not in formal statutes but in policy "guidelines" issued by the Party central committee. Important examples of this type of legal norm are the "Sixteen Articles" for the Cultural Revolution,<sup>55</sup> the Six Articles on Public Security<sup>56</sup> of 1967, and Mao's directive of December 31, 1968 which launched the severe "Purification of Class Ranks" campaign of 1969-1970.<sup>57</sup> Invariably, these campaign guidelines require the imposition of more severe punishment than imposed in normal times for

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53. See, e.g., visitor reports cited notes 8, 11, 18, 44, and 49 *supra*.

54. For a discussion of the impact of campaigns on the sanctioning process, see Lubman, *supra* note 2, at 561.

55. *Decision of the Central Committee of the Chinese Communist Party Concerning the Great Proletarian Cultural Revolution*, PEKING REV., Aug. 12, 1966, at 6.

56. An English translation appears in *Selections from China Mainland Press*, (U.S. Consulate General, Hong Kong), No. 4235, Aug. 9, 1968, at 1-2.

57. Reprinted in *MAO PAPERS: ANTHOLOGY AND BIBLIOGRAPHY* 157 (J. Cohen ed. 1970).

the deviant thoughts and acts that the campaign aims to suppress or deter. Thus, whether a case is handled by the public security or within a unit, its disposition is directly affected by the current political atmosphere and by any "guidelines" the Party may have issued for the direction of the campaign of the moment.

### *B. Nature and Consequences of the Crime*

Although the *Lectures on Basic Problems of the Criminal Law of Our Country*, published in 1957 before the deformalization of the Chinese legal process, sets forth a rather sophisticated formula for measuring the "social danger" of a particular criminal act,<sup>58</sup> the appended sentencing documents do not explicitly apply any systematic formula to determine the appropriate sentence for a particular criminal act. They simply state that "the consequences of the crime are great" or that "the offense has seriously endangered the revolutionary order" or "undermined the program to send educated youth to the countryside." Where the offense substantially damages political programs or personal rights, the offenders are commonly punished with severe sanctions, whatever the subjective political characteristics of the actor. This seems especially true with respect to such "common law crimes" as homicide, rape, and burglary. The appended documents indicate that even persons with good class status and positive political credentials are strictly sanctioned when they commit crimes involving violence or moral turpitude.

### *C. Class Status and the Criminal Process*

One of the most alien and interesting aspects of the Chinese criminal process from the viewpoint of the American lawyer is the wide variation in punishment for the same offense which can result from consideration of factors such as political attitude and class status. Various status classifications have significance for the Chinese criminal process. Aside from the broad distinction between "people" and "enemies" discussed above, individuals in China are assigned labels indicating their "personal class status" and "family origin." The class status designation was applied to China's rural population during the land reform of the regime's earliest years. Individuals were designated landlords, rich peasants, middle peasants, poor peasants, hired laborers, and so on according to their relationship to the "means of production." Classifications assigned at that time have remained essentially unchanged. The class status

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58. COHEN, *supra* note 2, at 509.

of persons reaching majority after the land reform period, however, is determined by their occupation. China's urban population, far more diverse in origin and occupation than rural residents, has never been fully classified as to class status.<sup>59</sup>

Another important status classification is "family origin," which is determined by one's family economic or occupational status three years prior to Liberation. As a rule, it corresponds to the class status of one's father. Regardless of one's own class status or occupation, family origin is considered highly significant. Although judging an individual according to his father's class status suggests a continuity with traditional Chinese concepts of collective responsibility and clashes with Mao's faith in the educability of man, it is difficult to change the deeply ingrained view of the family as the basic unit of society.

Class status and family origin, both of which must be entered on all official forms, are considered pertinent criteria for use in criminal sentencing, as is indicated by the numerous allusions to them in the appended documents.<sup>60</sup> Sentencing authorities appear to be quite ready to draw an inference of criminal or counterrevolutionary intent in the case of an offender with bad class status or family background.<sup>61</sup> Even more unfortunate for those so stigmatized is that the crucial initial decision whether to administer mild "persuasion-education" sanctions within the offender's unit or to refer him to the public security organs for criminal investigation, and sentencing often hinges on his class status or family background.<sup>62</sup> Also, with the advent of a "rectification campaign" which inevitably requires each unit to designate "targets" for investigation, struggle, and criticism, which may eventually lead to criminal sanctioning, the local powerholders often first pick on individuals with bad class status or family origin.<sup>63</sup>

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59. Richard Kraus, *The Evolving Concept of Class in the Chinese People's Republic* (Ph.D. Dissertation, Columbia University, 1974).

60. Persons in any of the "five bad categories" — landlords, rich peasants, counterrevolutionaries, bad elements, and Rightists — are virtually barred from responsible positions of any sort. The latter three categories though not economic class statuses, are subject to a stigma as severe as the former two. For all five groups, the stigma even carries over to the next generation and may seriously limit the marriage prospects and educational opportunities of the children.

61. See Lubman, *supra* note 2, at 560-61. See also Cohen's account of a fight between peasants and construction workers where all participants were leniently sanctioned except for an ex-convict — a former counterrevolutionary. He was sentenced to five years of "reform through labor" for "provoking dissension." COHEN, *supra* note 2, at 511-12.

62. This statement is based upon interviews with emigres from China, including Chao Nien-ju, *supra* note 12.

63. *Id.*

D. *The Individual's Personal "Political Rating"*

Perhaps even more important than class status and family origin in criminal sentencing is the offender's personal "political rating." This rating is determined by consideration of a variety of factors, including the individual's political attitude and behavior as well as past and present political affiliations. Virtually everyone is assigned a political rating by the local Party leadership, though for ordinary individuals this is a very informal process. Political rating of cadres by the Party is more formal. The "organization member" of the party committee, second in importance only to the Party secretary, in consultation with other key Party members periodically carries out a secret "internal ranking of cadres" into six categories — left, middle-left, middle, middle-right, right, and extreme right. A seventh category is the "counterrevolutionary," who normally does not remain in the unit. This formal Party rating of an individual may be modified during an investigation if the consensus of opinion of the suspect's peers is markedly different from the recorded ranking. It is unlikely, however, that such modification would result in an improved rating.<sup>64</sup>

These indicators of an individual's attitude toward socialism are given serious consideration in selection for higher education, job placement, and advancement, and in various stages of the criminal process. A person with an unfavorable or negative balance of political factors in his file is more likely to be targeted as a suspect, particularly in the case of a political crime, and more likely to receive a heavy criminal punishment if convicted.<sup>65</sup>

Although a bad political attitude might be expected of an individual with a landlord or capitalist family background, the appended sentencing documents as well as official Chinese propaganda organs such as *Peking Review* make it clear that, regardless of one's good economic class status, one's thinking may stray away from the correct proletarian line. If allowed to develop and spread unchecked, such thinking could eventually undermine socialism and lead to a restoration of capitalism. For example, the peasants have stubbornly clung to the right to earn additional income from tilling vegetable plots allotted to each peasant family.<sup>66</sup> Fear that

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64. This paragraph is based principally upon discussions with Chao Nien-ju, the emigre first cited in note 12 *supra*.

65. *Id.* For ample support of this proposition, see generally the interview materials presented in COHEN, *supra* note 2.

66. K. WALKER, PLANNING IN CHINESE AGRICULTURE 79-92 (1965). Note also that the state constitution stipulates that commune members may "farm small plots for their personal

allowing "bourgeois thoughts" to proliferate would eventually reverse China's revolutionary accomplishments prompted Chairman Mao in February 1975, to issue a major directive calling for study of "proletarian dictatorship" and for the restriction and ultimate elimination of "bourgeois right."<sup>67</sup>

Another manifestation of "bourgeois thinking" is the persistence of economic crimes such as corruption, embezzlement, and speculation.<sup>68</sup> In the sentencing statements in several such cases, it is revealed that heavy doses of "persuasion-education" and stronger administrative sanctions have failed to bring the errant individual's thinking and behavior into line with Party policy. Thus, unless he provides a quick and convincing confession or "establishes merit" by informing on others, the offender harboring "bourgeois thoughts" is likely to be "struck on the head with the iron fist of the dictatorship of the proletariat." Another category of crime which the appended sentencing documents attribute to bourgeois thinking is the sex offense, which in less puritan societies than China's is usually ascribed to a drive which transcends social or economic class affiliation.

Reactionary or counterrevolutionary thought is, of course, even worse than bourgeois thought and is ascribed to offenders convicted of political offenses. Ideally, of course, such thought should be detected and modified before it leads to criminal activity. It is the responsibility of each citizen to observe everyone else's behavior and to listen carefully to their every utterance and to report any anti-Party or anti-socialist leanings. In theory, all adults are expected to participate in twice-weekly political study meetings to discuss current policies and review the thinking of each member of the group. While such meetings are usually conducted on a fairly regular basis in urban areas, they are said to be generally less well attended in the countryside.<sup>69</sup>

Selected remarks one makes at these meetings, together with political evaluations filed by Party cadres, may be entered into one's dossier.<sup>70</sup> In the event that an individual is prosecuted for a serious crime as a first offender, his dossier is turned over to the public

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needs, provided that the development and absolute predominance of the collective economy of the people's commune are ensured." P.R.C. CONST. art. 7.

67. For a discussion of the significance of this directive, see Chang Chun-chiao, *On Exercising All-Round Dictatorship Over the Bourgeoisie*, PEKING REV., April 4, 1975, at 5.

68. See, e.g., Doc. A[12] and Doc. D[1]-[7].

69. Interviews held by the author with emigres in Hong Kong in the summer of 1975 and with Chao Nien-ju, *supra* note 12.

70. This paragraph is based primarily upon discussions with Chao Nien-ju, *supra* note 12.



security organs by the personnel office of the unit where he is employed. Dossiers of persons with a criminal record are held permanently by the public security organs of the county and municipalities where they reside. When an individual is under investigation in connection with a rectification campaign or in regard to a particular offense, the outcome will be strongly influenced by whether or not the investigator discovers in the dossier evidence indicating that the suspect's thinking has been "bourgeois" or "reactionary".

#### *E. Post-Crime Attitude of the Offender*

Aside from his general political rating, an offender's criminal sentence is strongly affected by his attitude toward his crime. The appended sentencing documents, and recent press reports of visitor interviews with high Chinese judicial officials, all emphasize the importance of the offender's post crime attitude.<sup>71</sup> As noted above,<sup>72</sup> one of the key principles of Chinese sentencing is "leniency to those who confess and severity to those who resist." Although this principle is closely related to the policy of stressing individual reform, the practice of instant exoneration of an offender who confesses and cooperates suggests that administrative convenience and political control are factors which sometimes are more influential than whether or not the offender has been genuinely reformed. For example, in Document D[7] an offender convicted of economic speculation is released without criminal penalty because he confessed, restored the spoils, and informed on his comrades. His lenient treatment contrasts markedly with the life sentence given to the "unrepentant" offender in Document D[1] who was convicted at the same time of a similar offense.

Another factor that may well contribute to the wide discrepancies in sentences for the same offense is the considerable degree of decentralisation present in the Chinese political-legal process. Given the lack of clarity or specificity in Chinese legal norms, criminal sentences imposed by county public security and Party authorities will reflect those officials' determinations of what will best further "socialist revolution" and "socialist construction" in that particular county. As revolutionary conditions vary in degree from place to place so will the sweep and bite of the "proletarian dictatorship" be adjusted to the demands of the local situation. The general lack of automatic or appellate review of county-level decisions also militates against uniformity in sentencing.

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71. See Docs. A - D; see Brown, *supra* note 44, at 477.

72. See notes 43-44 and accompanying text *supra*.

## IV. THE CRIMINAL SENTENCING PROCESS IN CHINA TODAY

A. *The Range of "Non-Criminal" and Criminal Sanctions*

We have noted in the above discussion that there are many informal or "educational" sanctions applied to offenders by their occupational or residential unit peers. And, for repeated minor offenses or for a single more severe violation of socialist order, the offender will be subjected to a more severe "disciplinary sanction" by his unit or "administrative sanction" by the public security organs. Although the imposition of disciplinary or administrative sanctions gives rise to a certain degree of stigma and may also lead to salary reduction and perhaps even a brief period of detention or other form of restriction of physical movement, technically it does not constitute a criminal sanction. The latter are still, in theory, imposed only by the courts which in practice ratify decisions basically determined by informal investigation and consultation by the public-security organs and by ranking Party personnel in the offender's unit.

The three-tiered sanctioning process — informal, administrative, and criminal — administered respectively by the basic units of work or residence, the public security organs, and the courts, still retains the basic structure and nominal division of authority established in the 1950's.<sup>73</sup> In fact, the division of function and power among these three echelons has always been rather fuzzy, with considerable overlap between tiers.<sup>74</sup> But, as suggested above, the anti-bureaucratic decentralizing thrust of the Cultural Revolution led to an increasing number of criminal offenses being handled by the occupational and residential units.<sup>75</sup>

The informal "educational" sanctions for petty offenses imposed by work and residential units in ascending order of severity, are: criticism-education; private warnings and threats; small group criticism; large group criticism; censure; speak-reason-struggle; and ordinary struggle.<sup>76</sup> This catalogue of the "administrative" sanctions imposed by the police in the early 60's also can be applied to current practice: formal warning, fine, and short detention under the Security Administration Punishment Act of 1957; supervised labor without segregation from society; and the most severe non-criminal sanction — rehabilitation through labor, which separates

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73. See generally COHEN, *supra* note 2.

74. Lubman, *supra* note 2, at 563-64.

75. See Cohen, *supra* note 9.

76. COHEN, *supra* note 2, at 20.

the offender from society for a long period of time.<sup>77</sup> The major criminal sanctions, which are theoretically applied only by the courts but actually determined jointly by the units, the public security, and judicial personnel, are: control, similar to the administrative sanction of supervised labor; imprisonment for a fixed term; imprisonment for life; death sentence suspended for two years; and the death sentence applied without delay.<sup>78</sup>

One category of sanctions which has grown in usage and significance in recent years warrants some attention and discussion at this point. This is the set of formal disciplinary sanctions applied by government organs. A similar set of disciplinary sanctions is applied by state-owned factories. These sanctions, usually employed in tandem with informal "educational" sanctions, as stipulated in the provisional regulations issued in 1957 are, in order of increasing severity: (1) warning — usually written as well as verbally delivered; this sanction is issued after a thorough investigation and private or public criticism; (2) demerit — this sanction is entered into the offender's personnel file and will affect future career development; (3) large demerit; (4) demotion in pay grade; (5) demotion in office rank; (6) stripping of all office rank; (7) probationary expulsion from the work unit; (8) expulsion.<sup>79</sup> Expulsion is, of course, a very severe sanction and is rarely applied, except in connection with the application of serious criminal penalties or police-imposed administrative sanctions. Another unit disciplinary sanction, which has emerged since the promulgation of the 1957 regulations, is compulsory labor for a prescribed period in a factory or on a commune affiliated with the unit; at the end of the stipulated period, the offender returns to his original job.<sup>80</sup>

Another important Chinese sanctioning device is the "cap" or "label" which is applied to prescribed categories of politically or

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77. *Id.* at 20-21. The decision to impose the serious administrative sanction of supervised labor and rehabilitation through labor upon offenders affiliated with a unit (a state factory or administrative organization) is, in practice, made by the work unit, not by the police. As for persons who are not affiliated with a state unit, the police apparently do make the decision to administer both sanctions. Interviews with Chao Nien-ju, *supra* note 12.

78. COHEN, *supra* note 2, at 21.

79. Selections from the Provisional Regulations of the State Council of the PRC Relating to Rewards and Punishments for Personnel of State Administrative Organs are reprinted in COHEN, *supra* note 2, at 193-95. For a discussion of unit-administrative sanctions, see COHEN, *supra* note 2, at 192-93.

80. This sanction may be viewed as a variant of the administrative sanction of supervised labor. The differences are that the compulsory labor sanction is applied solely by the units, with no police participation, and the offender is transferred physically to and from the labor location, though he remains an employee of his original unit. Interviews with Chao Nien-ju, *supra* note 12.

socially deviant individuals, who are allowed to remain in society subject to various restrictions. Persons so designated are identified by the suffix "element" added to the following undesirable classifications: landlord, rich peasant, reactionary capitalist counterrevolutionary, "bad," and Rightist. "Capping," which is accomplished by recommendation of the capped individual's unit, and approved by the public security bureau, generally means that the individual's political rights and physical liberty are restricted indefinitely and not just for a prescribed period, as under "control." All of the six above-mentioned categories are deemed hostile to socialism, but only the first five are considered "enemies of the people." As such, they are treated as "objects of dictatorship," which means that they are subjected to close surveillance and restraint by the public security as well as by the militia and by individual members of the "masses." Although capped Rightists are not regarded technically as "enemies" and are not deprived of their political rights, they are usually subjected to the serious administrative sanction of rehabilitation through labor, to reduction of salary and position, and in severe stigma.

Unlike class status which, with few exceptions, has proved to be a permanent designation, if a capped person exhibits exemplary behavior, his unit may remove the cap. Directives from the central Party and government authorities are even more important than individual behavior in determining when the caps should be removed. For example, a Party directive in 1962 decreed the removal of most caps placed on Rightists in 1957 and 1958.<sup>81</sup>

#### *B. The Unit Sanctioning Process in Action*

The following case, based on an interview with the assistant squad leader who helped to handle the matter, illustrates the typical operation of the unit sanctioning process. One key individual in the process is the political instructor of the workshop. He decides whether the matter can be resolved within the workshop, as in this case, or whether it must be referred to the Party secretary of the entire factory. The latter, in consultation with other members of the Party committee, will decide whether to turn the matter over to the public security, handle it jointly with the latter, or to handle the matter entirely within the unit. As explained above, this determination may be significantly influenced by the offender's "political rating" which is maintained in the files of the personnel department

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81. The above discussion of "capping" is largely based on interviews with Chao Nien-ju, *supra* note 12.

of the factory's general administration. The latter office is under the general supervision of the organization section of the Party committee.

*Reactionary Thought in a Shanghai Tractor Factory-1971*

(Interview in Hong Kong with a college graduate who had worked in the tractor factory for two years, and who served as assistant squad leader in handling the case described below.)

Li, an experienced worker who served as teacher to the younger workers and students doing their "learn work" period of proletarian apprenticeship, liked to listen to radio broadcasts from Taiwan and foreign countries. His neighbors reported his undesirable activity to the precinct station, which in turn notified the security defense section of the revolutionary committee of the tractor factory. Since Li was not a Party member, it was unnecessary for the precinct station to report first to the factory Party committee. The next step was for the security defense section to inform the party and line leadership in Li's workshop. The latter then convened a meeting of all the important people in the workshop; this session was held in the meeting room and did not include Li. The purpose of the initial session was to study the past behavior of the accused and to discuss how to handle the matter.

It was revealed in the meeting that Li was not active in political study and that he "was not close to the Party." He had often been heard to utter "strange talk" such as "America is good" and "Japan is good."

After the meeting the squad leader took Li aside and said: "Let's have a little talk. Your political attitude is unsatisfactory and you need to engage in self-criticism. You should begin by telling what bad thoughts you have harbored and what bad things you have done." Li began, as they all do, by admitting minor errors, such as being late to work or being untidy. The squad leader impatiently interrupted him, saying: "You are not being honest. You are avoiding the serious and speaking only of the minor problems." When Li persisted in his reluctance to confess what he knew the squad leader was after, the latter began talking about Chairman Mao and fundamental political principles, concluding with the exhortation that "The sooner you acknowledge your errors, the more leniently your case will be handled."

As Li had no close friends in the higher leadership levels of the factory who might help him, he realized that he had no choice but confession. After giving a verbal confession to the squad leader, he was then required to write out a "repentance statement."

The Party branch next called a mass meeting. Li was required to make a self-criticism before the assembled group. Each squad was required to send at least one representative to the meeting to criticize the target. At the conclusion of the mass participation phase, the secretary of the party branch summarized the case and gave his opinion as to how the offender should be sanctioned. His recommendation was forwarded to the factory revolutionary committee's security defense section and to the personnel section and the file was closed. Li received only a warning — the mildest possible unit disciplinary sanction. And since he was not a party member and this was considered a rather ordinary case, it was not even deemed sufficiently serious to be referred to the secretary of the factory Party committee.

The above is typical procedure for handling routine cases involving ordinary workers. If the offender is a cadre, however, the case goes to the county Party and public security authorities.

### *C. Crime, Criminals, and Punishments in Contemporary China*

The appended documents and other recent reports confirm the continued occurrence of crime in the PRC. The Chinese policy of strict secrecy regarding such matters makes it impossible, however, to measure how much crime exists and whether it is rising or declining. We can, nevertheless, describe the kinds of crime that are reflected in the sentencing documents and we can draw certain inferences as to how such crimes are likely to be handled. For purposes of our discussion, we will divide the crimes reflected in the documents into economic, political, sex, and violent offenses, recognizing the difficulty of drawing precise boundaries among these categories.

In China, where politics pervades all spheres of human activity, every crime is in a sense considered political since it tends to threaten the stability and existence of the socialist order. And we note in the preliminary and concluding exhortations to the masses in Documents B, C, and D that speculators, burglars, thieves, rapists, and murderers are all referred to under the single rubric of "that handful of class enemies." Moreover, we are told that the key

to crime suppression is to comply with the current Party line and policy as reflected in the documents which emerged from the Tenth Party Congress of August 1973.

Only a few of the offenses involved in the appended documents are, however, overtly political in purpose. These include the espionage cases (Document B[1]-[3]) and the "current counterrevolutionary" case (Document A[29]). Perhaps most notable about the sentences for the offenders in these cases is the mildness of the sanctions, which range from five to twenty years' imprisonment. One possible reason for the light punishment is the minority nationality of the offenders in the spy cases. In addition, the offender in Document B[3] was a female who had "confessed and acknowledged her guilt;" consequently, she received the lightest sentence of any of the three defendants in the espionage cases in Document B — five years' imprisonment.

The sentences in several of the other cases were also clearly influenced by the political impact of the crime, despite the apparent absence of political motivation. For example, we have already noted the severe sanction of immediate death meted out to those offenders convicted of raping "educated female youth," a crime which "seriously undermined" a major political program. The "political swindler" in Document A[16] also received a severe sentence of life imprisonment because his actions adversely affected the same program and "undermined socialist construction."

The sex offenses included in the appended sentencing documents are rape (Document A[14], [6], [11], [17-19], [24], and [26]), attempted rape (Document A[14]), sexual violation (Document A[12], [13], [20], [21], [23], [25]), sexual molestation (Document A[15]), "undermining a military marriage" (adultery with the wife of a member of the PLA) (Document C[3]), "interference with family relations" (adultery with the wife of an ordinary citizen) (Document A[13]), and "illegal love" (Document B[5]). Given the "all work, no play" image of China's revolutionary society that is reported by Western visitors, it is not really surprising that deviation from the prevailing puritan moral standards should be met with strong disapproval. But what is, perhaps, surprising is the harshness of the sanctions. For example, adultery with the wife of an ordinary citizen was punished with two years' imprisonment (Document A[13]) and adultery with the wife of a PLA man was punished with three years' imprisonment (Document C[3]). Also of interest is the suggestion that sex offenses spring from minds filled with "bourgeois thoughts" (Document B[4]-[5]).

In the adultery cases, the disruption of social relations is obviously deemed sufficiently great that "persuasion-education" or criticism alone is viewed as an inadequate response and a criminal sentence is considered necessary. This strict approach contrasts with the view advanced by some PRC legal scholars during the "constitutional era" of the mid-1950's. They argued that fornication and even adultery should not be handled as crimes.<sup>82</sup> In practice, however, even in that period, adultery was punished with criminal sanctions where there were aggravating circumstances and provided the injured spouse demanded prosecution.<sup>83</sup> The strict moral standards applied in the adultery cases (Documents A[13] and C[3]) reflect the continuing importance the Party places on protecting the family. The same policy is responsible for the difficulty of obtaining a divorce in China even when sought by both parties.

China has made impressive progress in economic development since 1949, but it readily concedes that it is still relatively poor, and it openly claims membership in the "Third World." Thus, income levels and stocks of consumer goods constantly lag behind increasing expectations. One result is that "bourgeois thoughts" prompt certain "bad elements" to attempt to satisfy their acquisitive desires by committing economic crimes such as corruption, speculation, embezzlement, theft, and robbery. Severe punishment is deemed necessary because this kind of offense is particularly demoralizing in a society where the Party leadership urges every individual to "serve the people" and where increased production is sought primarily not through material incentives but through devotion to "socialist construction." As Document D illustrates, offenses which may threaten implementation of the state economic plan, such as illegal transactions in rolled steel and machinery, are subjected to extremely heavy sanctions.

Another type of crime which has been traditionally abhorred in Chinese custom and severely punished from the days of the imperial criminal codes is the use of physical violence against another human being. The law and practice of the PRC is no exception. Severe sanctions are considered necessary to assuage the "people's anger" and to "safeguard the revolutionary order." For example, in Document A[5], a wife killer is sentenced to immediate death because he "killed her in a cruel manner" and "the people are extremely indignant." Wife killers in two other cases received reduced sent-

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82. Tsung Ching-Chih *et. al.* *A Discussion of Bigamy and Adultery*, reprinted in COHEN, *supra* note 2, at 318-20.

83. COHEN, *supra* note 2, at 324-26.



ences for adopting a cooperative and repentant attitude (Document B[4]-[5]). And in Document A[7] a teenage hooligan with a prior criminal record was sentenced to death with two years' suspension of sentence for killing another teenager during a street fight.

We have seen that the continuing occurrence of crime in China even after the basic elimination of exploitative private ownership of the "means of production" has been attributed primarily to a "handful of class enemies" who must be suppressed. Does a close study of the sentencing documents corroborate the charge that most criminals are "class enemies?" To put it briefly, the answer is no, except in the sense that all perpetrators of major crimes "endanger the revolutionary order" and are thus enemies of the interests of the people. But with very few exceptions both the individual class status and the family origin of the offenders in the appended documents are very good. Moreover, many of the offenders are Party members or non-Party members with responsible positions. As has been suggested, such persons are considered to have "forgotten their origins" and passed over the borderline into the camp of the "enemy."

It is hard to escape the conclusion that criminal tendencies, or "bourgeois thoughts," are present in even the best material. Indeed, this is the gist of the message that Chairman Mao delivered to the people of China in his "lofty instruction" in February 1975, warning that preoccupation with "bourgeois rights" will lead to a restoration of capitalism in China if bourgeois thoughts and the social and economic institutions giving rise to them are not steadily curtailed and gradually eliminated.<sup>84</sup> Mao's concern with bourgeois rot spreading in the highest levels of the Party was highlighted in the following widely circulated statement made not long before his death: "You are making the socialist revolution and yet don't know where the bourgeoisie is. It is right in the Communist Party — those in power taking the capitalist road."<sup>85</sup> The tumultuous events in China in the months immediately following Mao's death, culminating in the purge of Mao's widow and the other leaders most prominently associated with radical Maoist policies in education, industry, and agriculture, appear to confirm Mao's fears. Although it would be absurd to imagine that the new "moderate" leadership would attempt to "restore capitalism," it is already evident that certain practices of which Mao disapproved — such as dependence

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84. See generally Chang Chun-chiao, *supra* note 67.

85. Renmin Ribao (People's Daily), April 18, 1976, at 1, reprinted in PEKING REV., April 23, 1976, at 12.

upon tests as a key criteria for college entrance — are being resumed. The new leadership has also made clear its strong interest in increased trade with the West, a move which may signal a departure from Mao's principle of strict self-reliance. Only time will tell whether future growth in foreign trade and in the size and complexity of domestic industry will create a demand for return to a more formal model of law, with published regulations and stable institutions and procedures calculated to facilitate economic planning and give a sense of security to decision makers.

## V. CONCLUSION

When considered in the light of previous studies and information derived from interviews with former residents of the People's Republic, the documents provide valuable data and insight concerning crime and criminal punishment in China today, though of course it would be useful to have greater factual detail and further elaboration of the grounds for conviction and reasons for giving a particular sentence.

As one would expect in a revolutionary society led by a Marxist party, the documents are permeated with radical political rhetoric. Yet most of the criminals are not class enemies in the classic Marxist sense. Moreover, despite the elimination two decades ago of what Marxists consider to be the root cause of crime — exploitative capitalist ownership of the means of production — most of the crimes encountered in the cases in the appendices are still the kind of crimes involving sex, cupidity, and violence with which bourgeois American society is quite familiar.

Indeed, these documents reflect the concern any society feels when the accepted norms of social behavior are seriously violated. Despite the flamboyant political rhetoric, the documents do not reveal the existence of widespread and concerted political crime. Nevertheless, the extreme flexibility of the process and the use of criminal sanctions to support current Party policies bear the clear imprint of the Marxist instrumental theory of law, made even more elastic by Mao's anti-formalism and the traditionally low prestige of formal law in China.

## SENTENCING DOCUMENTS

Translated by Randle Edwards and Hungdah Chiu.

## DOCUMENT A

*Notice of the Intermediate People's Court of Tientsin (August 5, 1973)*<sup>86</sup>

## NOTICE

On August 5, 1973, the Intermediate People's Court of this Court, according to law, convicted and sentenced 29 criminals, including P'an Pao-hua, a hooligan (*liu-mang*)<sup>87</sup> who raped<sup>88</sup> female youths sent down to the countryside.<sup>89</sup> The sentences are hereby announced as follows:

[1] Criminal P'an Pao-hua, a hooligan who raped female youths sent down to the countryside, is a male, 37 years of age, and a native of Tientsin City. Before his arrest, he was the doctor in charge of a health station at Ta-sun-chuang Production Brigade, Pa-li-t'ai Commune, Southern Suburban District.

Criminal P'an is a person of extremely bad character and an incorrigible hooligan: Since 1958, he has taken advantage of his practice of medicine, and has used various contemptible means to violate sexually ten women and to act obscenely toward three women. Furthermore, taking advantage of the inability of the sick to resist, he raped five women. Most serious of all, in September 1970 and June 1972, while diagnosing the illnesses of two female youths named XXX and XXX, who had been sent down to the countryside, criminal P'an raped them both. Criminal P'an is a confirmed hooligan who used his position to violate women sexually and to rape and persecute female youths sent down to the countryside. He has thereby seriously undermined the program of sending educated youths to mountainous and other rural areas. His acts

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86. For a discussion of the source and authenticity of these appended documents, see notes 31-33 and accompanying text *supra*.

87. An editorial in a Chinese newspaper in 1957 gives the following definition of a hooligan: "[T]hose who do not engage in proper employment, do evil, regularly insult or rape women, look for fights and make trouble, seize things forcibly, swindle, fight, etc." Hsin-wen jih-Pao (Daily News, Shanghai), May 5, 1957, reprinted in COHEN, *supra* note 2, at 327. The editorial makes it clear that hooligan acts are crimes and must be "punished according to law."

88. For a discussion of the Chinese use of the term "rape," see note 41 and accompanying text *supra*. It should also be noted that despite the fact that the People's Republic of China has never published statutes regulating rape and other traditional crimes such as robbery and homicide, such acts have always been prosecuted as crimes. Interviews with former Chinese public security officials have established, moreover, that unpublished regulations available to sentencing authorities "define murder, rape, arson, and many other common crimes and set forth the maximum and minimum penalties for each." COHEN, *supra* note 2, at 317.

89. For a discussion of this program, see notes 39-40 and accompanying text *supra*.

constitute serious and extremely evil crimes and the people are extremely indignant.<sup>90</sup> Criminal P'an Pao-hua is hereby sentenced to death according to law,<sup>91</sup> and the sentence shall be carried out immediately.

[2] Criminal Sun Lien-hung, a hooligan who raped female youths sent down to the countryside, is a male, 31 years of age, and a native of Tientsin City. Before his arrest, he was a doctor at the health station of the Hsiao-nien-chuang Brigade, Wang-wen-chuang Commune, Western Suburban District.

Criminal Sun is a morally degenerate person and an incorrigible hooligan. Since 1968, while diagnosing the illness of patients, he acted obscenely toward three unmarried female youths on different occasions. Most despicably, when he was diagnosing the illness of an unmarried female youth named XXX, criminal Sun forcibly raped her repeatedly, causing her to become pregnant. And, in order to avoid criminal responsibility, criminal Sun went so far as to use extremely cruel means to perform an abortion on his victim; moreover, he also instigated her to shift the blame to someone else. Even more serious is the fact that since 1970, criminal Sun has used his position and threats to rape three female youths, including XXX, all of whom had been sent down to the countryside. Moreover, on the pretext of "diagnosing illness" he abused and ruined one of the three female youths in various ways and thereby seriously undermined the program for sending educated youths to mountainous and other rural areas. Criminal Sun also used his position to embez-

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90. For a discussion of the significance of such invocations of popular opinion, see notes 50-52 and accompanying text *supra*. These recitations obviously reflect Chairman Mao's emphasis on the "mass line" in all fields. News reports in recent years have carried stories of "mass trials" which bring out huge crowds to hear death sentences announced and to watch the execution which follows immediately. Although it is unclear how and to what extent the "masses" are consulted in connection with criminal investigation, adjudication, and sentencing, a Chinese judicial official stated in a recent interview with a foreign journalist that the opinion of the masses is one of the most important aspects of the Chinese legal system. He also stated that in serious criminal cases details of the crime are recorded on posters displayed in factories, offices, and other places of work. The judges "arrive at the right decision after extracting the opinion of the masses."

91. In Communist Chinese usage "punish according to law" means to impose severe and formal criminal sanctions rather than the milder "persuasion-education," or disciplinary and administrative sanctions" such as "demerits" imposed by the offender's work unit, and "detention-education" or "rehabilitation through labor" imposed by the public security organs. Emigres from China say that public announcements of criminal sentences, such as these documents never refer to specific statutory bases for the sanctions imposed; it is possible, however, that the phrase "according to law" is a reference to the internal regulations issued for the guidance of the authorities. See note 88 *supra*. See also note 30 and accompanying text *supra*.

zle more than 1900 Yuan<sup>92</sup> from public funds and coupons for purchase of more than 250 catties of grain, all of which he lavishly expended. Criminal Sun is a confirmed hooligan who took advantage of the practice of medicine to embezzle public funds, to violate and abuse women sexually, and to rape female youths sent down to the countryside, thereby seriously undermining the program of sending educated youths to mountainous and other rural areas. His acts constitute serious and extremely evil crimes and the people are extremely indignant. Criminal Sun Lien-hung is hereby sentenced to death according to law and the sentence shall be carried out immediately.

[3] Criminal Liu Nai-wang, a hooligan who raped female youths sent down to the countryside, is a male, 44 years of age, and a native of Tientsin City. Before his arrest he was the head of security defense<sup>93</sup> in Shih-min-chuang Production Brigade, Huang-chao-t'o Commune, Eastern Suburban District and concurrently head of the Brigade's fruit growing and forestry team.

Criminal Liu is an incorrigible hooligan who habitually does evil things. He began sexually violating women in the early period after liberation. Since 1963, he has used his position to violate sexually three women on different occasions and to act obscenely with two women. Even more serious is the fact that between 1970 and 1972 he further resorted to various contemptible means to abuse XXX and XXX, female youths who had been sent down to the countryside. On many occasions he acted obscenely toward them and raped them. This seriously undermined the program of sending educated youths to mountainous and other rural areas. Criminal Liu is a confirmed hooligan who used his position to do evil things, to violate women sexually and to rape female youths sent down to the countryside, thus seriously undermining the program of sending

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92. This would be equivalent to a figure between \$900 and \$1,000, an amount representing at least five years' earnings for the average peasant.

93. Security defense personnel in agricultural brigades and in urban resident's committees are generally "activists" who play an important role in assisting the public security in the prevention and detection of crime and in educating and "arousing" the masses to be vigilant in identifying and suppressing criminals and "class enemies." Likewise, their counterparts at the lower levels of industrial and other urban works units are non-salaried activists. However, personnel employed in the security defense section of the central administration of urban units are salaried cadres, many of whom were transferred from the public security organs. For the text of the statute establishing security defense committees, and for a discussion of their function, see COHEN, *supra* note 2, at 113-17. As a rule, there should be a security defense committeeman in each unit, but in some agricultural production teams the function is not taken seriously so there may be no one actually fulfilling this role. In the countryside, the head of security defense work at the brigade level is usually a Party member and is a member of the brigade Party branch committee.

educated youths to mountainous and other rural areas. His acts constitute serious and extremely evil crimes and the people are extremely indignant. Criminal Liu Nai-wung is hereby sentenced to death according to law, and the sentence shall be carried out immediately.

[4] Criminal Lu Chun-ho, a hooligan and rapist, is a male, 42 years of age, and a native of Peking City. Before his arrest, he worked in a street-operated factory run by the T'ao-yuan-ku Street revolutionary committee in West River District.

Before liberation criminal Lu served in the bandit [Kuomintang] army. After liberation, because he posed as a public security agent and molested women, he was sentenced to rehabilitation through labor (*lao-tung chiao-yang*).<sup>94</sup> After release from rehabilitation through labor, he stubbornly refused to repent and reform himself and continued to do evil things. From September 1972 until May 1973, posing as a public security agent late at night, he questioned male and female youths that he saw talking in the Haikou Road Park, on Ta-li Avenue and in other places, and on separate occasions used coercion and intimidation to act obscenely toward three female youths and to rape two others. In addition, he robbed watches, Jen-min-pi [People's currency], and other things from the victims. Especially despicable is the fact that after committing these acts, criminal Lu posed as a security-defenseman and went to the victim's units, falsely charging his victims with having promiscuous sexual relations. Criminal Lu is an habitual hooligan who posed as a public security agent, raped women, and falsely incrimi-

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94. This is the most severe of the "administrative sanctions" imposed by the public security. Vagrants, persons guilty of minor counterrevolutionary offenses, and hooligans who have committed numerous petty offenses, are sent for an indefinite period to camps where they engage in labor and intensive political study. *Id.* at 249-74. Originally indefinite, the period of rehabilitation through labor was nominally limited to three years by an instruction issued in the early 1960's; in fact, however, many inmates submit to the pressure to remain longer. *Id.* at 269. One reason for persons "choosing" to remain in rehabilitation camps after the expiration of the three year period is that despite the fact that the sanction of rehabilitation through labor is not a formal criminal sanction, the persons who have been subjected to it bear a heavy stigma if they return to their former milieu. Today, there may be fewer persons in rehabilitation through labor camps than prior to 1969 when an instruction is said to have been issued directing lower levels of the political-legal hierarchy "not to send contradictions upward" (*mao-tun pu-yao shang-chiao*). For a discussion of this directive, see notes 37-38 and accompanying text *supra*. This measure was probably in part an expression of post-Cultural Revolution Maoist anti-formalism and partly due to an overload of the "reform" and rehabilitation facilities caused by the wide disorder during the Cultural Revolution. One source suggests that this distinction led to the release of perhaps half of Fukien Province's inmates of rehabilitation through labor (prison) camps and their placement in agricultural production teams for "supervision by the masses" (*ch'un-chung chien-tu*). Interviews with Chao Nien-ju, *supra* note 12.

nated others, thus seriously endangering the social order. His acts constitute serious and extremely evil crimes, and the people are extremely indignant. Criminal Lu Chun-ho is hereby sentenced to death according to law and the sentence shall be carried out immediately.

[5] Murderer [or killer] Yu Ch'uan-hsi is a male, 31 years of age, of bourgeois family background (*chia-t'ing ch'u-shen*)<sup>95</sup> and a native of Hao-ch'iao County, Hopeh Province. Before his arrest, he worked in a bicycle factory in Tientsin City.

Criminal Yu married Wang Chin-lan in 1967. In recent years, criminal Yu without reason suspected that Wang was being unfaithful to him so he began to consider killing her. At about 3 a.m. in the early dawn of April 13, 1972, while Wang was sound asleep, criminal Yu grabbed her throat with both hands and violently choked her to death. Criminal Yu suspected his wife without reason and killed her in a cruel manner. The people are extremely indignant. Murderer Yu Ch'uan-hsi is hereby sentenced to death according to law and the sentence shall be carried out immediately.

[6] Criminal Pao-hsien Ts'ui, a counterrevolutionary who raped a female youth sent down to the countryside, is a male, 58 years of age, of bogus army (*wei chün*)<sup>96</sup> status, and, a native of Tientsin City. Before his arrest he was a member of the Hsiao-chuan-chuang Production Brigade, Nan-wang-chuang Commune, Northern Suburban District.

Before Liberation, criminal Ts'ui served as deputy leader of the Japanese controlled bogus public security team and later as a squad leader in a self-defense team of the Chiang gang. He was loyal to Japan and Chiang and persecuted the people. Once he led the bandit [Kuomintang] army to arrest three members of the masses and subsequently two of them were killed by the enemy. After liberation, he was sentenced to be placed under control (*Kuan chih*).<sup>97</sup>

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95. This term, which may be translated either as "family background" or "family origin," usually refers to the individual class status (*ko-jen ch'eng-fen*) of one's father. For a discussion of the significance of class status and family origin in the Chinese criminal process, see notes 59-63 and accompanying text *supra*.

96. This may refer either to the army of the Chinese Nationalist Government or to the Japanese controlled puppet army in China during World War II.

97. Control is a mild criminal sanction. Instead of being sent to prison or to a labor camp, the convicted criminal is subject to surveillance and restraint in his own neighborhood for a stipulated period of time. His physical freedom and political rights are curtailed and he must report at regular intervals to the public security organs. For a discussion of the development of control and the administrative-criminal distinction, see COHEN, *supra* note 2, at 276-85. In view of the close supervision exercised over persons under control, it is very unlikely that Ts'ui had in fact listened to enemy broadcasts or spread reactionary statements; other-

During the period of his control, he persisted in his reactionary standpoint, secretly listened to broadcasts from the enemy radio stations, spread reactionary statements, and maliciously attacked the policies of our party. And the most serious thing is that, when a female youth named XXX arrived at the said village to be assigned as a new member of the production brigade criminal Ts-si forcibly entered into sexual relations with her when she was sound asleep in the middle of the night. After that, he resorted to threats, pressure, and other means to have sexual relations with her over a long period, with the result that she became pregnant. The consequences of the crime he committed are extremely serious. Criminal Ts-ui has committed one crime after another, has persisted in being an enemy of the people, has raped a female youth sent down to the countryside, has seriously undermined the program of sending educated youths to mountainous and other rural areas and has thereby caused the people to become extremely indignant. Criminal Ts-ui Pao-hsien is hereby sentenced to death according to law, with execution suspended for two years. During this period, he will be assigned to compulsory labor to observe his future behavior.

[7] Criminal Wang Shu-Ying, a hooligan and a killer in a group assault, is a male, 18 years of age, and a native of Hsiung County of Hopeh Province. Before his arrest he was a student at Ch'in-chien Middle School. He has previously been sanctioned by being placed on probation at school (*liu-hsiao ch'a-k'an*)<sup>98</sup> and has been given detention-education<sup>99</sup> because of his participation in hooligan activities.

[8] Criminal Ma San-chi, a hooligan who was the ringleader in a group assault, is a male, 19 years of age, and a native of Shen County, Hopeh Province. Before his arrest he was a student at Ch'in-chien Middle School.

[9] Criminal T'ang P'ei-shan, a hooligan and a principal offender in a group assault, is a male, 22 years of age, and a native of Tientsin

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wise, he would certainly have been rearrested and sentenced to prison or to a labor reform camp. This recitation of his crimes is probably exaggerated to emphasize his rottenness.

98. In China, for minor crimes the general practice is for the offender to be first "educated" and sanctioned by his unit of primary affiliation. In the case of students or teachers, this would be the job of the Party authorities in the school.

99. If sanctioning by the offender's unit does not deter him from repeating his offense, he would next be liable to sanctioning by summary police procedures, established under the "Security Administration Punishment Act" (SAPA), promulgated in October, 1957. For a discussion of SAPA, see COHEN, *supra* note 2, at 200-37. Detention, here called "detention-education" (*chū-liu chiao-yü*) is the harshest sanction the police can impose under the SAPA. *Id.* at 210-12.



City. Before his arrest, he was an ["educated"] youth assigned to a [production] brigade as a new member at Shen County in Hopeh Province. Once he was subjected to juvenile control (*shao-kuan*)<sup>100</sup> because of his hooliganism and thefts.

[10] Criminal Chang Liu-shuan, a hooligan and a principal offender in a group assault, is a male, 19 years of age, and a native of Tientsin City. Before his arrest, he was a student at the I-hao Road Middle School in North River Borough. Once he was subjected to education by the public security organ because of his hooligan activities.

Criminals Wang Shu-ying and Ma San-chi fought over a female youth. Criminal Ma was unhappy so he asked criminals T'ang P'ei-shan and Chang Liu-shuan to plan a beating for criminal Wang. Criminal T'ang proposed assembling a gang to get even with Wang. Later criminal Chang banded together 6 persons, including Li Liu-sheng. Under the direction of criminal Ma, on the morning of May 19th they went to see criminal Wang to stir up trouble and fight. When criminal Wang discovered them, he returned home and got a triangular scraping knife. Chang Liu-shuan's gang surrounded criminal Wang, violently hit him in the head with bricks, and then fled. Criminal Wang, holding the scraping knife, immediately chased them, caught up with Li Liu-sheng, and violently stabbed him twice in the chest. Despite emergency treatment, Li subsequently died. After criminal Wang fled to escape punishment, he again used his knife to intercept a female student named XXX. He beat and acted obscenely toward her and unsuccessfully attempted to rape her.

Criminal Wang is a confirmed hooligan who has remained unchanged despite repeated education, has participated in a group assault, and has committed homicide. The crime he has committed is extremely serious. Criminal Wang Shu-ying, a hooligan who participated in a group assault and committed homicide, is hereby sentenced to death according to law, but with the execution suspended for two years. During this period, he will be placed under compulsory labor to observe the effect of the sanction on him.

Criminal Ma is a confirmed hooligan who instigated and directed a hooligan gang fight, thereby seriously endangering the revolutionary order. His crime is very serious. Criminal Ma San-chi, a hooligan who was the ringleader of a gang fight, is hereby sentenced to life imprisonment according to law.

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100. This apparently means that T'ang had spent time in a reform school or "house of discipline" for juvenile offenders, established in 1958 under the joint direction of the Ministries of Education and Public Security. *Id.* at 595-96. Little is known about these institutions.

Criminals T'ang and Chang have a hooligan life style. They formed a band for fighting and they actively participated in a hooligan gang fight, thereby seriously endangering the revolutionary order. Criminals T'ang P'ei-shan and Chang Liu-shuan, both principal offenders in a hooligan gang fight, are hereby each sentenced to imprisonment for ten years according to law.

[11] Criminal Liu Ch'ing-hua, a hooligan who raped a female youth sent down to the countryside, is a male, 33 years of age, and a native of Tientsin City. Before his arrest he worked at the Tenth People's Paper Mill. His father was a historical counterrevolutionary element (*li-shih fan-ko-ming fen-tzu*)<sup>101</sup> who committed suicide because of his fear of punishment.

Criminal Liu is morally degenerate and a confirmed hooligan. Since 1960 he has been subjected to detention-education many times for hooliganism, thefts, sexual violation of women, and undermining the program of sending educated youths to mountainous and other rural areas. But he has still refused to repent and reform himself and has continued to do evil things. In 1970 he began to follow around XXX, a female youth sent down to the countryside, and even went to her residence many times and used various tricks to try to seduce and act obscenely with her. Subsequently, in June 1971, he succeeded in raping her. Criminal Liu is a hooligan by nature who sexually violated women, raped a female youth sent down to the countryside, and undermined the program of sending educated youths to mountainous and other rural areas. His crimes are very serious. Criminal Liu Ch'ing-hua is hereby sentenced to life imprisonment according to law.

[12] Criminal Liu Ch'ang-hai, a counterrevolutionary hooligan who sexually violated female youths sent down to the countryside, is a male, 38 years of age, and a native of Wu-ti County, Shantung Province. Before his arrest, he was a member of the Hsiao-tung-chuang Production Brigade, Hsiao-tung-chuang Commune, Eastern Suburban Borough. Criminal Liu's thinking is reactionary and he is a confirmed hooligan and thief. Since 1954 he has uttered a great number of counterrevolutionary statements and has viciously attacked our party and socialist system. And on the pretext of engaging in sideline occupations, he has stolen a lot of state-owned and collectively-owned materials, sold them and lavishly squandered

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101. This refers to a person who committed counterrevolutionary acts prior to "Liberation," that is, before the establishment of the PRC. A person guilty of committing counterrevolutionary acts after liberation is termed a "current counterrevolutionary element" (*hsien-hsing fan-ko-ming fen-tzu*).

the money in gambling and the like. Furthermore, using seduction, threats, pressure, and various other contemptible means, he has violated sexually eight women on different occasions. Even more serious is the fact that in November 1971 criminal Liu resorted to telling lewd stories and to using other hooligan means to corrupt XXX, a female youth sent down to the countryside and even acted obscenely and sexually violated her many times. Criminal Liu is reactionary in his thinking and is an habitual hooligan and thief who has sexually violated women, corrupted, harmed, and sexually violated female youths sent down to the countryside, and has undermined the program of sending educated youths to mountainous and other rural areas. His criminal acts are very serious. Criminal Liu Ch'ang-hai is hereby sentenced to life imprisonment according to law.

[13] Criminal Wu Ning-sheng, a counterrevolutionary who sexually violated female youths sent down to the countryside, is a male, 41 years of age, from a puppet government official family background (*wei-kuan-li ch'u-shen*)<sup>102</sup> and a native of I-wu County, Chekiang Province. Before his arrest he was a custodian in the Coastal Defense Brigade, May 7th Commune, Southern Suburban District.

Criminal Wu is morally degenerate and reactionary in his thought. He was once sentenced to imprisonment for two years, with sentence suspended for two years, for the crime of interfering with family relations (*fang-hai chia-t'ing tsui*).<sup>103</sup> Although he underwent education, he refused to repent and reform himself. Since 1971, he used the telling of obscene stories and other despicable means to corrupt XXX, a female youth sent down to the countryside, and then on many occasions acted obscenely toward her and sexually violated her, with the result that she became pregnant. Even more intolerable is the fact that criminal Wu used mean and vulgar language viciously to malign our central leadership comrades. Criminal Wu's thinking is reactionary, and he has spread counterrevolutionary statements. Moreover, he is morally degenerate, and he has viciously corrupted and sexually violated female youths sent

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102. This means that his father was an official in the Kuomintang government prior to 1949.

103. This simply means the offense of committing adultery. During the heyday of the Soviet model of socialist legality in 1956 and early 1957, legal scholars in China were urging that adultery not be treated as a crime. COHEN, *supra* note 2, at 318-20. Sanctioning practice has varied depending on the status of the parties and the particular circumstances of the case. The general trend, however, appears to be toward treating adultery as a criminal act meriting a rather severe sanction.

down to the countryside, and has undermined the program of sending educated youths to mountainous and other rural areas. His criminal acts are very serious. Criminal Wu Ning-sheng is hereby sentenced to life imprisonment according to law.

[14] Criminal Jen Te-ch'un, a hooligan who entered a house to commit violence and rape, is a male, 19 years of age, and a native of Huang-hua County, Hopei Province. Before his arrest he worked in the Long March Brick Kiln, Western Suburban District. His father is a capped counterrevolutionary element (*tai-mao fan-ko-ming fen tzu*).<sup>104</sup>

Criminal Jen is a confirmed hooligan and thief. Since April 1972, he has committed more than 20 burglaries in the Hoping and West River Boroughs, breaking doors and locks and sneaking through windows of houses to steal bicycles, watches, and other property. Moreover, while committing burglary, he intimidated and molested two female youths named XXX and XXX. The serious thing is that criminal Jen sneaked into the house of XXX in Hoshing Village and, seeking two sisters sleeping, he picked up a brick and hit them repeatedly in the head with the intention of raping them after they became unconscious. But after he was discovered by the elder brother of the girls, criminal Jen fled on a bicycle. After being injured by the beating, the sisters were brought out of danger by emergency treatment. In November 1972, criminal Jen went so far as twice to enter homes in broad daylight with intent to commit rape and was apprehended at the scene by the masses. Criminal Jen entered homes to commit burglary, acted obscenely toward women, and attempted to commit rape with violent means, thereby seriously endangering revolutionary order. His crimes are very serious and popular indignation is great. Criminal Jen Te-ch'un is hereby sentenced to life imprisonment according to law.

[15] Criminal Wang Te-fa, a hooligan who accosted women, is a male, 30 years of age, and a native of Wu-ch'ing County, in Tientsin City. Before his arrest he [worked at] the Pan-ch'iao Agricultural Spare Parts Plant in Tientsin City as a worker retained under a suspended sanction of dismissal.<sup>105</sup> He is a capped bad element (*tai-mao huai fen-tzu*).<sup>106</sup>

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104. Translated literally, this means "wears the cap of a counterrevolutionary element." Compare note 101 *supra*.

105. This is one of the formal administrative sanctions applied by the units.

106. Translated literally, this means "wears the cap of a bad element." This is one of the capped categories discussed in note 81 and accompanying text *supra*. Persons in this category are generally of two types: (1) persons who committed crimes "against the people"

Criminal Wang is morally degenerate. For hooliganism and theft, he has already been thrice subjected to compulsory education (*ch'iang-chih chiao-yu*)<sup>107</sup> and twice sentenced to criminal sanctions, but he refused to repent and reform. During the period while he has worn a cap, he has been undergoing supervised reform (*chien kai*)<sup>108</sup> but he has continued to do evil things.

From September 1972 to February 1973, after return to the city, he intercepted women on their way to and from work near the People's Park late at night and in an extremely despicable manner used force in acting obscenely and molesting ten persons. His criminal behavior is very wild and unrestrained. Criminal Wang is an habitual hooligan who molested women in a contemptible way. His criminal acts are very serious and popular indignation is great. Criminal Wang Te-fa is hereby sentenced to life imprisonment according to law.

[16] Criminal Su Feng-ming, a political swindler, (*cheng-chih cha-p'ien fan*)<sup>109</sup> is a male, 47 years of age, and a native of An-ch'iu County, Shantung Province. Before his arrest, he worked in a lumbermill. He is a capped bad element.

Criminal Su was twice subjected to detention-education for swindling. In June 1972 while he was undergoing supervised reform he even faked his personal history, impersonated a "Communist Party Member" and "leadership cadre" and falsely claimed to be "in charge of planning construction for the West Mountain construction project for a certain military unit" and to be authorized to reassign party and government cadres and recruit engineers and technicians. He recklessly swindled by false pretense and in all defrauded more than thirty people of 600 dollars [*Jenminpi*]. Even more serious is the fact that criminal Su used as a pretext for fraud the story of reassigning youths who had been sent down to the coun-

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prior to Liberation and whose character has not improved; and (2) hooligans who commit repeated violations of public order — such persons may graduate to the status of "bad element." Bad elements are less numerous than other kinds of "elements" because persons who commit the kind of act warranting bad element designation are usually sentenced to serve a term in prison or a stint in "labor reform."

107. This appears to be an administrative, not a criminal, sanction; it probably refers to the practice of subjecting loafers to periods of compulsory labor.

108. This is a criminal sanction imposed by a court. The offender remains in his original unit and performs his regular work at reduced pay for a prescribed period. The offender also may be subjected to one or more concurrent disciplinary sanctions, such as a formal warning or demerit. One case which illustrates the use of this sanction involved adultery between a male painter and a married nurse. The man was subjected to five months' *chien kai* and the woman to three months. Interviews with Chao Nien-ju, *supra* note 12.

109. This signifies the crime of fraud involving a false claim to possess political authority.

tryside, causing eight youths to become dissatisfied with production labor in the villages and thus to wait in Tientsin for a long time for "reassignment." He has thereby undermined the program of sending educated youths to mountain and countryside areas. Criminal Su spread rumors to deceive the masses, caused people to become disturbed, defrauded people of money, and undermined socialist construction and the program of sending educated youths to mountainous and other rural areas. Popular indignation is great. Criminal Su Feng-ming is hereby sentenced to life imprisonment according to law.

[17] Criminal Chang Te-ch'un, who raped a female youth sent down to the countryside, is a male, 43 years of age, and a native of Tientsin City. Before his arrest he was the head of security defense for the Tung-chang-chuang Production Brigade, of Ch'eng-shui-ku Commune, Southern Suburban District.

Criminal Chang has an obscene mind. Since 1970 he has on many occasions used his official authority to act obscenely toward and attempt to rape XXX, a female youth sent down to the countryside. Each time he was upbraided and rejected by her. But criminal Chang refused to give up. So, in July 1972, in order to achieve his despicable purpose he used political pressure and threats to entice her into his home and rape her. Then, for a long period of time he dominated her, subjected her to abuse and sexually violated her. Criminal Chang is morally degenerate. He used his position to rape a female youth sent down to the countryside, employing evil methods, thus seriously undermining the program of sending educated youths to mountainous and other rural areas. His crimes are serious. Criminal Chang T-ch'un is hereby sentenced to imprisonment for twenty years according to law.

[18] Criminal Sung Ch'ing-hua, who raped a female youth sent down to the countryside, is a male of 33 years of age and a native of Tientsin City. Before his arrest, he was the deputy head of the Fourth Production Team of the T'ou-tao-kou Production Brigade, Chung-hsing Ch'iao Commune, T'ang-ku District.

Criminal Sung used his authority for evil purposes and in July 1971, he enticed a female youth sent down to the countryside, XXX [who was assigned] to live in his home, and took the opportunity to act obscenely toward her. Even more serious is that he raped her when she was sound asleep. Afterwards, by using various vicious means such as savagely beating and coercing her, he sexually violated and abused her for a long time in an attempt to monopolize her affections. Criminal Sung used his authority to do evil things

and used vicious means to rape a female youth sent down to the countryside. His actions seriously undermined the program for sending educated youths to the mountain and countryside areas. And, after his arrest, his attitude was cunning and he tried to deny major offenses and admit only minor ones. Criminal Sung Ch'ing-hua is hereby sentenced to the aggravated sanction of imprisonment for 20 years according to law.

[19] Criminal Shih-Kuo-yun, who raped a female youth sent down to the countryside, is a male, 50 years of age, and a native of Tientsin City. Before his arrest he was vice-chairman of the revolutionary committee of Huo-chuang-tzu Production Brigade, Huo-chuang-tzu Commune, in the Northern Suburban District.

Criminal Shih is a man with a dirty mind and corrupt morals who engaged in promiscuous sexual relations. Since 1971, he has used his authority and resorted to various contemptible means such as "recognizing as an adoptive relative" to win over and seduce a female youth XXX who had been sent down to the countryside. Even more serious is that late one night in August 1972, criminal Shih sneaked into the room of XXX, and through threats and intimidation forcibly violated her sexually. Later he resorted to despicable means such as threat and coercion to violate her sexually many times, abused her, and finally caused her to become pregnant. Criminal Shih has a hooligan life style. He used his authority to rape a female youth sent down to the countryside. He resorted to contemptible means [to commit the crime], and seriously undermined the program for sending educated youths to mountainous and other rural areas. His crimes are serious. Criminal Shih Kuo-yun, a hooligan who raped a female youth sent down to the countryside, is hereby sentenced to imprisonment for 20 years according to law.

[20] Criminal Ma Chin-sheng, who sexually violated a female youth sent down to the countryside, is a male, 29 years of age, and a native of Tientsin City. Before his arrest, he was the accountant of a production team of the Shang-hsiao-t'ing Production Brigade, Pai-t'ang-Kou Commune, in the Southern Suburban District.

Criminal Ma is a person of evil character and is morally degenerate. Since 1970, he filled a female youth named XXX with obscene thoughts and tried to corrupt her. Subsequently, in 1972, he sexually violated her and made her pregnant. Even more serious is the fact that criminal Ma used an extremely despicable method to give her an abortion and used various means to control her in order to violate her sexually over a long period. This seriously impaired the physical and mental health of the victim and drove her to at-

tempt suicide by jumping into a river. Fortunately, she was rescued by the masses. Criminal Ma is a person of bad character and degenerate morality. He used evil means to corrupt, abuse and to violate sexually a female youth sent down to the countryside. He seriously undermined the program for sending educated youths to mountainous and other rural areas. His crimes are serious. Criminal Ma Chin-sheng is hereby sentenced to imprisonment for 20 years according to law.

[21] Criminal Chang Shao-p'eng, a hooligan who sexually violated a female youth sent down to the countryside, is a male, 34 years of age, and a native of Pao-ti county of Tientsin City. Before his arrest, he was a worker at the Hsin-ho Shipyard.

Criminal Chang was previously subjected in detention-education for his hooligan criminal activities, but he refused to repent and reform. Since 1958, he has on different occasions sexually violated four women and acted obscenely toward ten women. Even more serious is that when a female youth named XXX came to the factory to "learn labor" (*hsueh kung*),<sup>110</sup> he took the opportunity to win her affections in order to have illicit sexual relations with her. In 1969, he used numerous means in an attempt to prevent this female youth from being re-settled on a farm located in the Northeast (Manchuria) but did not succeed. Subsequently, he tried to corrupt her by various means such as material inducements and by sending obscene letters to her, thereby seriously undermining the program for sending educated youths to mountain and countryside areas. In 1971, when this female youth returned to Tientsin to visit her relatives, he took the opportunity to violate her sexually. Criminal Chang is an habitual hooligan who sexually violated women, corrupted and sexually violated a female youth sent down to the countryside and obstructed [the program of] sending educated youths to mountainous and other rural areas. His crimes are serious. Criminal Chang Shao-p'eng is hereby sentenced to imprisonment for 20 years according to law.

[22] Criminal Li Chih-kang, a hooligan and robber, is a male, 26 years of age, and a native of Tientsin. Before his arrest, he worked on the mechanic team of the Municipal Public Works Administra-

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110. To avoid the growth of elitism and to foster "proletarian consciousness," all college students and government employees must spend some time each year working on a farm, in a military unit, or in a factory. This is a post-Cultural Revolution form of "clinical" education which originated with Chairman Mao's famous May 7, 1966 directive which advised students not to limit themselves to academic pursuits and exhorted them to engage in industry, agriculture, and military affairs.



tion of the Bureau of the Municipal Public Works of Tientsin City and was a controlled bad element (*huai-fen-tzu*).<sup>111</sup>

Criminal Li was previously subjected to detention-education, supervised reform with cap and control for hooliganism and theft. During the period he was placed under control, he continued to commit crimes, acting obscenely toward women and also sexually violating women by despicable means. He also led a female hooligan, Chao XX (the case has been handled separately), to wander through various places, including Peking, Tsinan, and Nanking, to engage in theft. They stole cash and a lot of other things, including watches, which they sold for cash and lavishly spent. Even more serious is that on the evening of November 10, 1972, criminal Li followed a female worker named XXX to a remote place in Wang Ch'uan-ch'ang New Village, knocked her down with his fist and grabbed her property. When XXX resisted the robbery and cried for help, criminal Li fled in panic. Criminal Li, a hooligan by nature, refused to change after repeated education, sexually violated women, engaged in wide-spread thefts and also highway robbery. His criminal acts are serious and have undermined the revolutionary order. Criminal Li Chih-kang is hereby sentenced to imprisonment for 15 years according to law.

[23] Criminal Fang Chi-san, who sexually violated a female youth sent down to the countryside, is a male, 32 years of age, and a native of Ts'ang County, Hopei Province. Before his arrest, he was the head [probably the Party secretary] of the T'ou-tao-kou Production Brigade, Hsiao-chan Commune, Southern Suburban District, and a member of the standing committee of the district (*ch'u*) revolutionary committee.<sup>112</sup>

Criminal Fang is a person of evil character and morally degenerate. In early 1973, he used his official authority to violate sexually many times a female youth named XXX who had been sent down to the countryside. . . thereby seriously undermining the program for sending educated youths to mountainous and other rural areas. His criminal acts are serious. Criminal Fang Chi-san, who sexually violated a female youth sent down to the countryside, is hereby sentenced to imprisonment for 15 years according to law.

[24] Criminal Chang Shih-kuang, who raped a female youth sent down to the countryside, is a male, 36 years of age, and a native of

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111. See note 105 *supra*.

112. A geographic and governmental subdivision of a large city, such as Tientsin, Shanghai, and Peking. The revolutionary committee serves as both the permanent organ of the local peoples' congress and as the local government.

Tientsin City. Before his arrest, he was the head of a kiln in the Nan-ma-chi Brigade, Shuang-Kang Commune, Southern Suburban District.

Criminal Chang is a person of evil character and morally degenerate. He used his official authority to win over and seduce a female youth, XXX, who had been sent down to the countryside. In May 1972, he tricked her into going to a remote place and forcibly had sexual relations with her. Subsequently, he continued to violate her sexually by means of threats and coercion and caused her to become pregnant. In order to cover his criminal act, criminal Chang even resorted to a despicable method to give her an abortion, thereby seriously impairing the physical and mental health of the victim. Criminal Chang, a morally degenerate person, used his official authority to rape and persecute by despicable means a female youth sent down to the countryside. Thereby seriously undermining the program for sending educated youths to mountainous and other rural areas. Criminal Chang Shih-kuang is hereby sentenced to imprisonment for 15 years according to law.

[25] Criminal Wang Chien-ch'eng, who sexually violated a female youth sent down to the countryside, is a male, 23 years of age, and a native of Yueh-ling County, Shantung Province. Before his arrest, he was a member of Ching-kuang Brigade, Ching-kuang Commune, Northern Suburban District.

He was once subjected to education by the public security organs because of his frequent accosting and molesting of women on the Ching Tsin-pa Highway since 1972. However, Criminal Wang refused to change his evil habits and continued to commit crimes. In September of the same year, he resorted to various despicable means to violate sexually a female youth, XXX, who had been sent down to the countryside, and caused her to become pregnant. His criminal act seriously undermined the program for sending educated youths to mountainous and other rural areas. The victim wanted to commit suicide, but the head of her family discovered the truth of the matter and informed the authorities who brought the criminal to justice. Criminal Wang, a person of hooligan life style, used despicable means to violate sexually a female youth sent down to the countryside, thereby seriously undermining the program for sending educated youths to mountainous and other rural areas. Criminal Wang Chien-ch'eng is hereby sentenced to imprisonment for 15 years according to law.

[26] Criminal Li Chén-t'ang, who raped a female youth sent down to the countryside, is a male, 40 years of age, and a native of

Ling County, Shantung Province. Before his arrest, he was the head of the San ts'un Production Brigade and of the insecticide plant of the Chun-liang-ch'eng Commune, Eastern Suburban District.

Criminal Li has obscene thoughts and is morally degenerate. He was once given a demerit (*chi-kuo*)<sup>113</sup> for having promiscuous sexual relations, but he refused to repent and reform. Since 1972, he used his official authority to fill a female youth, XXX, who had been sent down to the countryside, with obscene thoughts and committed such criminal acts against the said female youth as corruption, flirting, and acting obscenely toward her. Most serious of all is that in April 1972, criminal Li raped her when all members of her family were out. Subsequently, he used coercion to violate her sexually many times. Criminal Li, a person of hooligan life style, used his official authority to corrupt, injure, and rape by despicable means a female youth sent down to the countryside, thereby seriously undermining the program for sending educated youths to mountainous and other rural areas. Criminal Li Chen-t'ang is hereby sentenced to imprisonment for fifteen years according to law.

[27] Criminal Wang Ching-ch'i, who raped a female youth sent down to the countryside, is a male, 21 years of age, and a native of Tientsin City. Before his arrest, he was the deputy head of the Second Production Team, Chang-hsien-chuang Production Brigade, Chu-t'ang-chuang Commune, Northern Suburban District.

Criminal Wang was once subjected to criticism-education (*p'i-p'ing chiao-yu*)<sup>114</sup> for disseminating obscene thoughts, but he was unwilling to repent and reform. In 1972, criminal Wang used his official authority to act obscenely toward a female youth XXX who had been sent down to the countryside. In December of the same year, when the female youth was working in an animal feed warehouse, criminal Wang even raped her in the daytime. Subsequently, criminal Wang resorted to coercion and pressure to violate her sexually many times. Criminal Wang, a person with obscene thoughts, used his official authority to rape a female youth sent down to the countryside, thereby seriously undermining the program for sending educated youths to mountainous and other rural areas. Criminal Wang Ching-ch'i is hereby sentenced to imprisonment for 15 years according to law.

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113. This is a disciplinary sanction imposed by the work unit. See COHEN, *supra* note 2, at 194.

114. This is the mildest form of sanction. *Id.* at 20. There are two forms: group criticism by one's peers in the work or residential unit; or private criticism and exhortation by persons in leadership positions, usually the cadre in charge of political work (*cheng-kung kan-pu*) in each small unit.

[28] Criminal Chang Hung-lien, a burglar and thief, is a male 19 years of age and a native of Tientsin City. Before his arrest, he was placed under compulsory labor (*ch'iang-chih lao-tung*)<sup>115</sup> at the Hung-h'sing [Red Star] Farm.

Criminal Chang is seriously bourgeois in his thinking. Once he was placed under compulsory labor for two years for burglary. During the period of his compulsory labor, he escaped four times and collaborated with another element under compulsory labor to engage in burglary. From December 1972 to February 1973, he committed more than thirty burglaries and thefts in public areas and in people's homes in the southern suburbs, northern suburbs, and Ho-pei areas of the city and got more than 140 dollars in cash and other things such as clothing, grain, coupons, and cloth coupons which he lavishly spent. Even more serious is the fact that criminal Chang and another thief together flagrantly robbed a [state-operated] mobile retail stall at Eastern Station of more than thirty dollars. Criminal Chang is a thief by nature who despite repeated education has remained unchanged. He seriously undermined the revolutionary order and endangered the people's interests and his crimes are serious. Criminal Chang is hereby sentenced to imprisonment for ten years according to law.

[29] Criminal Jen Yung-hsiang, a current counterrevolutionary (*hsien-hsing fan-ko-ming fan*),<sup>116</sup> is a male 24 years of age and a native of T'ang-'i County, Shantung Province. Before his arrest, he lived in Ch'eng-shui-ku Town in the southern suburbs of the city. His father is an historical counterrevolutionary element.

Criminal Jen is reactionary in his thinking. Since 1968, he has frequently listened to broadcasts from enemy radio stations, has written reactionary phrases, has mailed counterrevolutionary letters, has attacked the socialist system and the various general and specific policies of our party, has attacked the program of sending educated youths to mountainous and other rural areas, and absurdly attempted to establish a counterrevolutionary organization and become a member of the Chiang gang's special task forces. His counterrevolutionary attitude is very marked and his crimes are serious. Current counterrevolutionary criminal Jen Yung-hsiang is hereby sentenced to imprisonment for ten years according to law.

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115. This is an "administrative sanction" imposed by the offender's residential or work unit and not by the police, as is the case with the more severe administrative sanction of rehabilitation through labor. Offenders subjected to this sanction are sent for a prescribed period to do physical labor in a factory or on a commune. At the end of this period, they may return to their former position.

116. See note 101 *supra*.

The above stated sentences of the 29 criminals, including P'an Pao-hua, have been ratified by<sup>117</sup> the Revolutionary Committee of Tientsin City.

It is so announced.

Tientsin Intermediate Level  
People's Court  
August 5, 1973

(Not to be posted in the street)<sup>118</sup>

#### DOCUMENT B

##### Quotation from Chairman Mao

"Resolutely suppress all counterrevolutionary elements and thus greatly consolidate our revolutionary dictatorship, in order to facilitate the thorough carrying out of the revolution and the achievement of the goal of establishing a great socialist state."<sup>119</sup>

##### *Notice of the Chinese People's Liberation Army Military Control Section<sup>120</sup> of the Public Security Organs of Meng-lien County in Yunnan Province*

Under the guidance of our great leader Chairman Mao's great teaching that "the line is the key; once it is grasped everything falls into place,"<sup>121</sup> the revolutionary people of the various nationalities in this county have undergone thorough education in the realms of the ideological and political lines. Chairman Mao's revolutionary line and policies have increasingly penetrated people's hearts and the proletarian dictatorship has achieved unprecedented consolidation. The revolutionary people of the various nationalities have further opened up a new high tide of "in agriculture learn from Tachai,"<sup>122</sup> and the situation of production and the revolution at the

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117. See discussion of the death penalty in note 90 *supra*.

118. Emigre interviews suggest that this cautionary message is apparently intended to keep such notices from the eyes of foreigners, not from the Chinese masses.

119. This is a frequently quoted statement of Chairman Mao Tse-tung, but the Chinese press does not adhere to scholarly standards of precise citation, and I have been unable to locate the original source in Mao's voluminous writings.

120. During the Cultural Revolution, the courts, procuracy, and police organs all suspended operations; their functions were taken over by the military and exercised by military control sections at the county level and by military control committees at the next higher administrative level, the prefecture.

121. This is another oft-quoted statement by Chairman Mao.

122. Tachai is a model agricultural brigade in a poor dry area of Shansi; it is held up as an example of the great increases in agricultural productivity which can be achieved through "self-reliance." It illustrates the extent of capital construction such as drainage and

present time are unprecedentedly good. But a handful of class enemies within and without the country are not reconciled to their defeat. They act in concert with each other at a distance in extremely violent and wicked ways, break the law, and wildly carry on all kinds of destructive counterrevolutionary activity. In order to strengthen the proletarian dictatorship, safeguard the social order, protect the interests of the masses of the people, on the basis of the consistent policy of the party and the angry demand of the revolutionary people, we hereby pronounce according to law the following sentences upon the bandit Chiang's spy Lo Kuang and four other criminals:

[1] Bandit Chiang spy Lo Kuang, male, 28 years of age, of Ai-ni nationality, and a native of Tung-lang Commune in Lan-ch'ang County.

Criminal Lo is reactionary in his thinking, and is hostile to our party and to the socialist system. In July 1967 he joined a bandit Chiang spy organization. After being sanctioned leniently by us, he persisted in his reactionary viewpoint and continued to engage in espionage, including psychological warfare with the intent of instigating others to defect. He provided enemy intelligence organizations with intelligence reports on our military and government on numerous occasions. His criminal acts are serious and the people are very indignant. Chiang bandit spy Lo Kuang is hereby sentenced to twenty years' imprisonment according to law.<sup>123</sup>

[2] Bandit Chiang spy Yen K'an-pan, male, 45 years of age, of Wa nationality, is a reactionary chief, and a native of Meng-ma Commune in Meng-lien County.

Criminal Yen is reactionary in his thinking and hates our party and the socialist system. In 1958 he betrayed his country and fled abroad. While abroad he actively engaged in espionage and provided enemy agents with intelligence reports on our military and government and plotted to entice the residents of border areas to

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irrigation projects, which can be built by primitive labor-intensive methods during the slack season. In recent years, a major campaign has been launched to emulate Tachai and rapidly mechanize Chinese agriculture over the next decade. PEKING REV., Nov. 14, 1975, at 4-6; Feb. 25, 1977, 11-15.

123. Unlike most of the cases in Doc. A, this case and the two following cases fall well within the ambit of one of the few PRC criminal statutes — the "Act of the PRC for Punishment of Counterrevolutionaries." Article 6 of the Act provides that "Those who engage in . . . (1) Stealing or searching for state secrets or supplying intelligence to a domestic or foreign enemy. . . shall be punished by death or life imprisonment. . . [or]. . . where the circumstances of their cases are relatively minor they shall be punished by not less than five years of imprisonment." COHEN, *supra* note 2, at 300.

flee abroad. His criminal acts are very serious and the people are very indignant. Bandit Chiang spy Yen K'an-pan is hereby sentenced to twenty years' imprisonment according to law.

[3] Bandit Chiang spy Yeh An, is a female, 29 years of age, of Wa nationality, and a native of La-Lei Commune in Meng-lien County.

Criminal Yeh is reactionary in her thinking, and has engaged in promiscuous sexual relations. After being subjected to criticism she harbored resentment. In June 1970, she deserted her country and fled abroad where she joined an espionage organization. Although her criminal acts are very serious, after her apprehension she confessed and acknowledged her guilt. On the basis of the party's policy<sup>124</sup> to "deal leniently with those who confess and severely with those who resist" bandit Chiang spy Yeh An is leniently sentenced to five years' imprisonment.

[4] Criminal Yu Pao, a poison-murderer, is a male, 27 years of age, of La-Ku nationality, and a native of Nan-ya Commune in Meng-lien County.

Criminal Yu's bourgeois thinking is extremely severe — on many occasions he has listened to enemy broadcasts. He is rotten, degenerate, and morally decadent. He had sexual intercourse over a long period of time with his wife's sister. And, in order to achieve his purpose of illegal cohabitation, he then formed the intention of killing his wife. In March 1970, he failed in two attempts to kill his wife, Na Erh. The criminal still did not give up. On January 3, 1971, while his wife was sick, he poured poison into some liquor and inveigled his wife into drinking it with the result that she was poisoned and died despite emergency efforts to save her life. The method employed by criminal Yu was very cruel. Because of his serious criminal acts popular indignation is great. However, because during the investigation period he was willing to confess and acknowledge his guilt, poison-murderer Yu Pao is hereby sentenced to twenty years' imprisonment according to law.

[5] Killer Tsou Cheng-ch'ing, alias Tsou Hsiao-kuai, is a male, 34 years of age, of Han nationality, and a native of Wei-ning County in Kweichow Province.

Criminal Tsou's bourgeois thinking is extremely severe in de-

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124. It is interesting to note that in one of the few situations in any of the cases included in these documents where the court could have cited a published statute as the basis for its decision — Article 14(2) of the Act of the PRC for Punishment of Counterrevolutionaries provides for reduced punishment where the offender repents, COHEN, *supra* note 2, at 302 — it instead simply relies upon the broad policy of "leniency to those who confess and severity to those who resist."

gree. He is rotten, degenerate, and sexually promiscuous. He even suspected, without basis, that his wife was engaging in sexual intercourse with someone else so he began to mistreat her. In 1967, Tsou illegally fell in love with someone else at Mo-chiang. After being reported by his wife and being subjected to criticism, criminal Tsou became filled with hatred. On the 15th of June 1971, he killed his wife, Tao hsu -fang, with a knife and then failed in an attempt to commit suicide. Because of the serious criminal acts he committed and the cruel method he employed, popular indignation is great. However, during the investigation period he was relatively good in acknowledging his guilt. On the basis of the policy of "dealing leniently with those who confess and severely with those who resist" murderer Tsou Cheng-chi'ing is leniently sentenced to fifteen years' imprisonment.

The party's consistent policy hitherto has been "to deal leniently with those who confess and severely with those who resist." We wish to solemnly warn that handful of class enemies: The only way out for you is to cease doing evil, confess and acknowledge your guilt, transform yourself from evil to good, and reveal your accomplices, thereby redeeming yourself by establishing merit. If you persist in your delusion and do not wake up, and single-mindedly continue your non-conformist activities, you will inevitably be struck violently on the head with the iron fist of the proletarian dictatorship.

The revolutionary people of all nationalities throughout the county must raise high the flag of victory and unity of the Ninth Party Congress, and never forget Chairman Mao's great teaching "increase vigilance, defend the motherland." You must strengthen your grasp of the enemy's circumstances, and pay close attention to new developments in the class struggle and strictly defend against the destructive activities of the class enemy, pull out by the roots that handful of hidden class enemies, thoroughly eradicate the hidden illness, further consolidate and strengthen the proletarian dictatorship, and seize even greater victory for the revolution and for production.

August 8, 1972

#### DOCUMENT C

#### Quotation from Chairman Mao

"Resolutely suppress all counterrevolutionary elements and thus greatly consolidate our revolutionary dictatorship, in order to facilitate the thorough carrying out of the revolution and the



achievement of the goal of establishing a great socialist state."<sup>125</sup>

"In order to safeguard the social order and the interests of the broad masses of the people, it is also necessary to exercise dictatorship over burglars, swindlers, killers, arsonists, hooligan gangs, and the various bad element who seriously undermine the social order."<sup>126</sup>

*Chinese People's Liberation Army Military Control Committee<sup>127</sup> of  
the Public Security Organs of the Szu-Mao Region of Yunnan  
Province*

NOTICE

Under the intelligent leadership of the Party Central Committee headed by our great leader Chairman Mao, the people of the various nationalities of our region have penetratingly carried out education in ideology and the political line and have achieved great victory. The proletarian revolutionary line and policy of Chairman Mao have further penetrated into the hearts of the people. The dictatorship of the proletariat is now more solidly established than ever before. Industrial and agricultural production is becoming. Thus, the situation in general is extremely good. However, the defeated class persists in struggling. The co-conspirators within and without and above and below act in concert. Using various cunning and malicious means, they have tried to undermine the socialist revolution and socialist construction and have absurdly attempted to sabotage the dictatorship of the proletariat and restore capitalism. In order to strengthen war preparation, to defend the great achievements of the great proletarian cultural revolution, to safeguard social order and the interests of the broad masses of the people, to defend the smooth carrying out of the socialist revolution and the enterprise of socialist construction, and to consolidate and strengthen the dictatorship of the proletariat, we must resolutely crack down on the destructive activities of counterrevolutionary elements and various other criminal elements. In accordance with the party policy of "leniency toward those who confess their crimes, but severe punishment to those who resist" and the demand of the broad masses of the people and after ratification by higher levels, the sentencing according to law of 22 criminals is hereby announced as follows:

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125. See Doc. B *supra*.

126. Address by Mao Tse-tung, reprinted in CHUNG-HUA JEN-MIN KUNG-HO KUO FA-KUEI HUI-PIEN 3 (1957).

127. See note 120 *supra*.

[1] Killer A-San, male, 24 years of age, Ai-ni nationality, and a native of Meng-lien County of Yunnan Province.

When criminal A was the director of a cooperative, he used his position to deceive and oppress the masses. He harbored hatred against a member of the cooperative Wo-Ch'a, who had exposed A's adultery, and he sought an opportunity to get revenge against him. On the evening of September 3, 1968, Criminal A used his position to incite the masses to carry out an illegal struggle<sup>128</sup> against Wo-Ch'a and he instigated other persons to drag Wo-Ch'a to the bank of Nan-la River where criminal A personally bound him and pushed him into the river where he drowned. His means [of committing the crime] was very cruel and the crime he committed was very serious. The people are extremely angry at this criminal act. Criminal A-San is hereby sentenced according to law to death, but the sentence will be suspended for two years. During this period, he will be placed under compulsory labor so as to observe his future behavior.

. . . .

[2] Burglar Han Hua-yun is a male, 16 years of age, of Chin nationality, of capitalist family background, and a native of Meng-hai County in Yunnan Province.

Criminal Han came from a family which belonged to the exploiter class. He was fond of enjoyment, disliked labor, and was an incorrigible thief. Despite repeated education, he refused to change. Since 1970, he has stolen four bicycles, nineteen Shanghai Brand watches and other goods, all in Meng-hai [County]. Even more serious was the fact that he stole one Pu-ch'i rifle, three Ch'i-chiu rifles, and more than 100 rounds of ammunition from the warehouse of a certain unit of the Liberation Army. He attempted to use the guns to intercept and rob people on the road. After being detained, he persisted in his reactionary stand and resisted reform. Fearing punishment, he subsequently escaped but was captured. His crime is serious and the people are very angry. Burglar Han Hua-yun is hereby sentenced according to law to imprisonment for 15 years.

. . . .

[3] Criminal Wang Ch'ang-ch'eng, who undermined a military marriage (*p'o-huai chün-hun*),<sup>129</sup> is a male, 25 years of age, of Yi

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128. "Struggle" is the most severe form of informal "administrative sanction;" it involves assembling a large group to subject an offender to public accusations, humiliation and physical intimidation, and may involve beating. COHEN, *supra* note 2, at 20. It is not, of course, supposed to result in the death of the "target."

129. Adultery with the wife of a member of the People's Liberation Army has always been punished severely. For a case decided in 1959, see COHEN, *supra* note 2, at 324.

nationality, and a native of Ching-ku County in Yunnan Province.

Criminal Wang is a moral degenerate who undermined the marriage of a member of the military by committing adultery with and making pregnant Yang XX, who was the wife of a man in active military service. When the problem was revealed he directed the woman to have an abortion in an attempt to cover up his crime. The consequences of his crime are rather bad. Thus criminal Wang Ch'ang-ch'eng, who undermined a military marriage, is hereby sentenced according to law to imprisonment for 3 years.

. . . . .

[4] Burglar Lo Lin-sheng, is a male, 21 years of age, of Han nationality, a native of Meng-tzu County in Yunnan Province, and a staff member of the Forestry Bureau of Mo-chiang.

Criminal Lo's thinking is seriously bourgeois. At 7 p.m. on August 17, 1971, he embezzled more than 2900 Yuan of public funds from the Forestry Bureau of Mo-chiang. Under the influence of party policy, he confessed and acknowledged his crime and returned all the stolen money. With respect to burglar Lo Lin-sheng, he shall be leniently handled according to law. He shall be exempted from criminal punishment and turned over to the masses for criticism-education.

. . . . .

The policy of our party is "leniency toward those who confess their crimes, but severe punishment to those who resist" and "ringleaders shall be punished but we shall not prosecute those who were forced to participate in a crime." We solemnly warn that handful of class enemies: You are already encircled by the broad masses and the only way out is for you to stop doing evil, to surrender yourselves to the authorities, to confess and hand over evidence, to disclose your partners and to perform meritorious service to atone for your crimes. If you persist in your delusion and do not wake up, and put up a stubborn resistance, you shall be severely punished by the proletarian dictatorship.

People of all nationalities in the entire Region, we must keep firmly in mind the teaching of our great leader Chairman Mao to "never forget the class struggle," and must raise our alertness, strengthen war preparation, watch closely new developments in the class struggle, resolutely crack down on the disruptive activities of counterrevolutionary elements, safeguard the socialist revolution and socialist construction, promote the further development of the mass movement of "in agriculture learn from Ta-chai," further consolidate the dictatorship of the proletariat, and under the guidance

of Chairman Mao's revolutionary line, "units to achieve an even greater victory."

February 11, 1972

#### DOCUMENT D

##### *The Intermediate People's Court of Harbin City of Heilungkiang Province*

##### Notice

Under the guidance of the spirit of the Party's Tenth National Congress, the movement within this city to criticize Lin Piao and to rectify work style is being carried out in a still more penetrating way and an excellent situation of a new high tide in industrial and agricultural production is emerging. But a handful of class enemies are still there carrying out destructive and trouble-making activities by all sorts of means. In the economic sector they collude from within and without, ingratiating themselves with and corrupting cadres and disturbing markets by speculation and profiteering, swindling, illegally contracting for work, running underground factories, and undermining the policy of planned purchase and supply. They seriously disrupt social order and socialist construction. In order to strengthen the dictatorship of the proletariat to strike severely against the rabid onslaught of the class enemies so as to consolidate the socialist position, and in line with the strong demand of the broad masses of the revolutionary people, this court hereby, in accordance with the policy of the Party, passes sentence according to law upon a group of criminals who have committed corruption, fraud, speculation, and profiteering. The sentences are announced below:

[1] Liu Hsien-ch'un, a criminal who engaged in corruption, theft, speculation and profiteering, is a male, 35 years of age, who lives in Harbin City. Criminal Liu has an evil character and has been subjected to administrative sanctions on many occasions for corruption and violation of laws and discipline. Taking advantage of his position as a purchasing agent since 1967, Liu, ganging up with another corrupt element named Hsü Kwei-hsiang whose case has been handled separately, and five others, colluded from within and without, procured illegally some 12,100 Yuan, by faking bills and receipts, embezzling and stealing, buying at low prices and selling at higher prices important state materials such as rolled steel, lumber and lathes. Criminal Liu received 10,700 Yuan, which he squandered.

After his arrest, he exhibited a negative attitude toward confessing his misdeeds. His acts constitute serious crimes and the people are very indignant. He is hereby severely punished according to law<sup>130</sup> with life imprisonment.

[2] Ts'ui Yü-ch'i, a criminal who engaged in fraud, is a male, 47 years of age, who lives in Pa-yen County. Criminal Ts'ui has been previously sentenced to imprisonment three times for committing such offenses as theft and fraud. Since 1972, he has obtained and squandered some 5,400 Yuan by means of pretending to buy transformers, engines, lathes and lumber for communes and brigades in Harbin, Wuchang, Mulan, Hulan and other places. Criminal Ts'ui has always engaged in swindling and has refused to correct himself despite repeated education; he is hereby severely punished according to law with fifteen years' imprisonment.

[3] Chiang Yüshen, alias Chiang Ting-jen, a criminal who engaged in illegal contracting for work, speculation, and profiteering, is a male, 55 years of age, who does not have a fixed address. Criminal Chiang had been sentenced to imprisonment, rehabilitation through labor, and detention-education many times for committing such offenses as counter-revolutionary activities, speculation and profiteering. Since 1962, in collusion with two other speculator-profiteering elements, Yang Hsiao-tseng and Hsu Fan-lin (both were handled separately), he obtained some 3,900 Yuan by illegally contracting for work and illegally buying and selling important materials such as transformers and electrical wire. He squandered all of it. Criminal Chiang has always done evil things, refused to correct himself upon repeated education, and has refused to confess his misdeeds after arrest. He is hereby severely punished according to law with ten years' imprisonment.

[4] T'an Sheng-lin, a criminal who engaged in speculation and profiteering, is a male, 47 years of age, who lives in Harbin. Criminal T'an has been previously subjected to administrative sanctions for engaging in corruption but he has not corrected his evil habits.

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130. Although the sentencing documents never specify the statutory basis for any particular sentence, the punishment in this and in the following speculation cases in Doc. D could have been imposed under the rather loose provisions of the "Act of the PRC for Punishment of Corruption," promulgated on April 21, 1952. Portions of the statute are quoted in COHEN, *supra* note 2, at 308-11. With the exception of the offender in Doc. D[7], who got off without punishment and the offender in this case (Doc. D[1]), who could have received the death penalty if the court had ruled the circumstances to be "especially serious," the offenders whose cases are reported in this document all received the maximum punishment possible under the pertinent provisions of the Corruption Act.

Since 1961, while recuperating from illness, he obtained some 3,600 Yuan by illegally buying and selling coupons for some 47,000 catties of grain and some 15,000 (Chinese) feet of cloth, as well as some 3,500 other coupons, and some 600 catties of rice. He squandered all of it. Criminal T'an has seriously undermined the policies of planned purchasing and supply and market order. Naturally, he should be severely punished according to law. However, after his arrest, he exhibited a positive attitude toward confessing his crimes. Therefore, according to the Party's policy of "dealing leniently with those who confess and severely with those who resist," he is hereby leniently punished according to law with eight years' imprisonment.

[5] Ma Pao-yü, a criminal who engaged in fraud, is a female, 31 years of age, who lives in Harbin City. Criminal Ma is a person of extremely bad character. Since 1971, using her position as a saleswoman, she has extorted some 3,300 Yuan and a lot of coupons for purchasing wrist watches, bicycles, and sewing machines for the masses. She has squandered all of the money. Since criminal Ma is a morally degenerate person and has fraudulently acquired money and articles from the masses, she is hereby sentenced according to law to five years' imprisonment.

[6] Li Kuo-chien, a criminal who engaged in fraud, is a male, 46 years of age, who lives in Harbin City. Criminal Li has on many previous occasions been "educated" by imprisonment and by being dismissed from his office (*K'ai-ch'u kung-chih*)<sup>131</sup> for committing such offenses as corruption, speculation, and profiteering. But he refused to correct himself and continued to engage in fraudulent criminal activities. Since 1971, he obtained some 1,600 Yuan and several hundred catties of food and edible oil by means of pretending to buy generators, transformers, pumps, and other items for communes and production brigades in Harbin, Chaotung and Anchen. Criminal Li refused to correct himself and persisted in fraud. He is hereby sentenced according to law to five years' imprisonment.

[7] Luo Liang-yü,<sup>132</sup> a criminal who engaged in speculation and

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131. This means to be deprived of the civil service rank appropriate to one's position, but to be retained in the job with less salary and security.

132. This case was discussed at length in a news report filed from Peking by John Burns. Burns, a Canadian journalist then accredited to China, states that this case was used as an example to other felons of the advantages of making a clean breast. . . . This sentencing document's interest to an outsider . . . lies in the fact that it not only sheds light on the judicial system about which little has been disclosed since it was reformed during the Cultural Revolution, but also reveals

profiteering, is a male, 34 years of age, who lives in Harbin City. Criminal Luo was twice previously placed under "detention for 're-education'" for speculation and profiteering, faking official seals, and other offenses. He was capped as a bad element and turned over to the masses for supervised reform. But criminal Luo did not change his bad habits. Subsequent to 1967, he again faked official seals and letter of introduction and moved around through Hopei, Tientsin, Liaoning, Kirin, and other places. He bought large quantities of fishing net wire, wool yarn, organic glass buttons, flints, and other items which he sold at higher prices, thus obtaining some 22,700 Yuan. Criminal Luo has resisted reform and engaged in speculation and profiteering activities. His acts have seriously undermined the socialist economic order and should be severely punished according to law. However, enlightened by the Party's policy, he has actively confessed his crimes and has exposed the crimes of other criminals. Criminal Luo has returned some 17,100 Yuan and part of the goods, thus manifesting a certain degree of repentance. According to the Party's policy of "dealing leniently with those who confess and severely with those who resist" he is hereby given the lenient treatment of exemption from criminal punishment.

We severely warn the handful of class enemies that the Party's policy has always been one of "dealing leniently with those who confess and severely with those who resist." Your only way out is to stop doing evil and give yourselves up. If you stubbornly resist and continue your criminal activities, you will certainly be subject to severe restraint by the dictatorship of the proletariat.

The broad masses of the revolutionary workers and staff members and the broad masses of the revolutionary people must continue to study in depth the documents of the Party's Tenth National Congress, closely follow Chairman Mao's great and lofty instruction, further carry out the movement to criticize Lin Piao and to rectify work style, grasp firmly the class struggle in the realm of economy and continue to actively report and disclose all criminal elements who undermine socialist construction and market order, so as to strike firmly against the destructive activities of a handful of class enemies and to consolidate and strengthen the dictatorship of the proletariat.

November 17, 1973

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much about the workings of the tightly controlled economic system. It reveals how vulnerable that system is to unscrupulous operators.

N.Y. Times, Jan. 28, 1974, at 1, col. 1.

DOCUMENT A

# 布告

本號于一九七三年八月五日，在澳門路下開張，今將本號之各項規定，佈告如下：

一、本號之宗旨，在於經營各項業務，並為社會服務。凡我僑胞，如有需要，請向本號洽辦。本號之業務，包括各項貿易、運輸、倉庫、保險等。本號之服務，力求周到、快捷、可靠。凡我僑胞，如有需要，請向本號洽辦。本號之業務，包括各項貿易、運輸、倉庫、保險等。本號之服務，力求周到、快捷、可靠。凡我僑胞，如有需要，請向本號洽辦。

二、本號之地址，位於澳門路下。凡我僑胞，如有需要，請向本號洽辦。本號之業務，包括各項貿易、運輸、倉庫、保險等。本號之服務，力求周到、快捷、可靠。凡我僑胞，如有需要，請向本號洽辦。

三、本號之營業時間，為每日上午九時至下午六時。凡我僑胞，如有需要，請向本號洽辦。本號之業務，包括各項貿易、運輸、倉庫、保險等。本號之服務，力求周到、快捷、可靠。凡我僑胞，如有需要，請向本號洽辦。

四、本號之收費標準，如下：

- 一、各項貿易，按貨物之價值，收取百分之二之佣金。
- 二、運輸業務，按貨物之重量，收取運費。
- 三、倉庫業務，按貨物之體積，收取倉租。
- 四、保險業務，按貨物之價值，收取保費。

五、本號之服務範圍，包括澳門、香港、廣東、廣西、雲南、貴州、四川、陝西、甘肅、寧夏、青海、新疆、西藏、蒙古、台灣、東南亞、歐洲、美洲、大洋洲等。凡我僑胞，如有需要，請向本號洽辦。

六、本號之服務對象，包括個人、企業、政府、團體等。凡我僑胞，如有需要，請向本號洽辦。

七、本號之服務質量，力求周到、快捷、可靠。凡我僑胞，如有需要，請向本號洽辦。

八、本號之服務態度，力求誠實、守信、負責。凡我僑胞，如有需要，請向本號洽辦。

九、本號之服務宗旨，在於為社會服務。凡我僑胞，如有需要，請向本號洽辦。

十、本號之服務目標，在於為社會提供優質服務。凡我僑胞，如有需要，請向本號洽辦。





## DOCUMENT B

## 毛主席语录

坚决地、彻底地、将一切反革命分子镇压下去，而使我们的革命事业大大地巩固起来，以便将革命进行到底，达到建成伟大的社会主义国家的目的。

## 中国人民解放军

## 云南省孟连县公安局军事管制小组

## 通告

在伟大领袖毛主席“路线是个纲，纲举目张”的伟大教导指引下，我县各族革命人民深入进行思想和政治路线方面的教育，毛主席的革命路线和政策更加深入人心，无产阶级专政空前巩固，各族革命人民进一步掀起了“农业大寨”的新高潮，当前革命和生产形势空前大好，但是国内外一小撮阶级敌人不甘心于失败，他们造谣污蔑、互相配合、穷凶极恶，猖狂地进行种种反革命破坏活动。为了加强无产阶级专政，维护社会秩序，保护人民群众利益，根据党的历来政策和广大革命人民的强烈要求，依法判处将匪特劣罗 光等五名罪犯，现布告如下。

蒋匪特务罗光，男，28岁，爱尼族，渭川县东明公社人。罗犯思想反动，敌视我党社会主义制度。一九六七七年七月参加蒋匪特务组织，经我宽大处理后，仍坚持反动立场，继续从事特务活动，进行心战策反，多次向敌特机关提供我军、政情报，罪行严重，民愤很大，依法判处特务罗光有期徒刑十五年。

蒋匪特务岩坎班，男，45岁，佤族，反动头人，孟连县孟马公社人。岩犯思想反动，仇视我党社会主义制度，一九五八年叛国外逃，在外期间，积极从事特务活动，向敌特提供我军、政情报，策反边民外逃，罪行严重，民愤很大，依法判处特务岩坎班有期徒刑十五年。

蒋匪特务叶安，女，29岁，佤族，孟连县腊娘公社人。叶犯思想反动，破坏男女关系，受批判后心怀不满，于一九七〇年六月叛国外逃，参加特务组织，从事特务活动，并派特务叶安入境企图发展特务组织，罪行严重，但捕获后尚能坦白认罪，根据党的坦白从宽，抗拒从严的政策，从宽判处有期徒刑五年。

投毒杀人犯王玉，男，27岁，拉祜族，孟连县南雅公社人。玉犯资产阶级思想极为严重，多次收听敌台广播，腐化堕落，道德败坏，长期与异族妹通奸，为达奸淫目的，起杀妻之心，一九七〇年三月自杀两次企图毒害其妻，二未遂，该犯仍不死心，于一九七一年一月三日起毒害其妻，将毒药放入酒内喂其妻服后中毒，经抢救无效死亡，玉犯手段毒辣，罪行严重，民愤很大，但在审期间尚能坦白认罪，依法判处有期徒刑十五年。

杀人犯郭正清，又名郭小翠，男，34岁，汉族，贵州省威宁县人。郭犯资产阶级思想极为严重，腐化堕落，乱搞男女关系，还无据怀疑其妻与他人奸，进行虐待。一九六七年在黔江与地人非法恋爱，被其妻刀秀芳提出批评，郭犯怀恨在心，于一九七一年六月十五日持刀将刀秀芳杀死，郭犯自杀未遂，罪行严重，手段毒辣，民愤很大，但在审查期间认罪较好，根据坦白从宽，抗拒从严的政策，从宽判处有期徒刑五年。

党的政策历来是“坦白从宽，抗拒从严”。我们要正告一小撮阶级敌人，你们只有停止作恶，坦白认罪，改恶从善，揭发同伙，立功赎罪，才是唯一的出路。倘若执迷不悟，一意孤行，必将受到无产阶级专政铁拳的迎头痛击！

全县各族革命人民要高举“九大”团结胜利的旗帜，牢记毛主席“斗、私、批、修、反”的总路线，深入开展革命，密切注意阶级斗争的新动向，严防阶级敌人的破坏活动，深挖一小撮阶级敌人的代理人，彻底肃清其罪恶，进一步巩固和加强无产阶级专政，夺取革命和生产的更大胜利。

一九七二年八月八日

DOCUMENT C

毛主席语录

要正确地认识一切反革命分子罪恶下流，而使我们的革命事业大大地巩固起来，以便将革命进行到底，达到建成伟大的社会主义国家的目的。

为了维护社会主义秩序和广大人民的利益，对于那些盗窃犯、诈骗犯、杀人放火犯、流氓集团和各种严重破坏社会主义秩序的坏分子，也必须实行专政。

中国人民解放军  
云南省思茅地区公安机关军事管制委员会

布告

我区各族人民在伟大领袖毛主席为首的党中央的英明领导下，深入进行思想和政治路线方面的教育，取得了重大的胜利，毛主席的无产阶级革命路线和政策更加深入人心，无产阶级专政空前巩固，工农联盟更加巩固，形势一派大好，但是，‘天败的阶级’还在挣扎，他们内外呼应，上下配合，采取各种阴谋毒辣的手段，破坏社会主义革命和社会主义建设，妄图颠覆无产阶级专政，复辟资本主义，为了加强专政，保卫无产阶级专政的巩固，维护社会主义秩序和广大人民的利益，保卫社会主义革命和社会主义建设事业的顺利进行，巩固和加强无产阶级专政，必须坚决打击反革命分子和各种刑事犯罪分子的各种破坏活动，根据党的‘坦白从宽，抗拒从严’的政策和广大人民群众的请求，经上级批准，依法判处如下：

- 罪犯李炳凤有同犯十五年，杀人犯王福才，男，24岁，拉巴族，云南镇沅县人，同案犯王二四，女，49岁，苦聪族，云南镇沅县人，王、二四犯资产阶级思想严重，近感草率，腐化堕落，长期酗酒，为非法目的的目的，合谋杀害刀头寨的干部，用刀将李福才杀死，移尸灭迹，掩盖罪证，手段残忍，罪恶严重，民愤极大，依法判处杀人犯王福才死刑，同案犯王二四判处有期徒刑十五年，强迫劳动，以观后效，判处同案犯王二四有期徒刑十五年，杀人犯王福才，男，17岁，汉族，四川青神县人。
- 罪犯李炳凤有同犯十五年，杀人犯王福才，男，24岁，拉巴族，云南镇沅县人，同案犯王二四，女，49岁，苦聪族，云南镇沅县人，王、二四犯资产阶级思想严重，近感草率，腐化堕落，长期酗酒，为非法目的的目的，合谋杀害刀头寨的干部，用刀将李福才杀死，移尸灭迹，掩盖罪证，手段残忍，罪恶严重，民愤极大，依法判处杀人犯王福才死刑，同案犯王二四判处有期徒刑十五年，强迫劳动，以观后效，判处同案犯王二四有期徒刑十五年，杀人犯王福才，男，17岁，汉族，四川青神县人。



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